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ABSTRACT

A Senate committee hearing received testimony on proposed amendments to the Indian provisions of the Elementary and Secondary Education Act (ESEA). The proposals include amendments to the ESEA amendments of 1978 related to Bureau of Indian Affairs (BIA) schools and amendments to the Tribally Controlled Schools Act of 1988. Both sets of proposals stress local tribal flexibility in developing education programs and continue the trend toward increasing tribal contracting of federal services and programs. Testimony from U.S. Senators and representatives of Native educational associations addressed the role of Native school boards, the backlog of nearly a billion dollars in construction needs at BIA schools, the need for investment accounts for every BIA school to cover the costs of capital improvements, funding mechanisms, tribal educational standards and accountability, and local training and technical assistance needs. The question of whether a BIA grant school could also receive state charter-school funds was discussed. The appendix contains the Navajo Nation's recommendations for specific language to be used in the amendments. (SV)

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ED 451 012

S. HRG. 106–560

REAUTHORIZATION OF THE ELEMENTARY AND SECONDARY EDUCATION ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING ON THE TITLE AND PROVISIONS IN THE DRAFT REAUTHORIZATION FOR THE ELEMENTARY AND SECONDARY EDUCATION ACT

APRIL 26, 2000
WASHINGTON, DC

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REAUTHORIZATION OF THE ELEMENTARY AND SECONDARY EDUCATION ACT

WEDNESDAY, APRIL 26, 2000

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:31 a.m. in room 485, Senate Russell Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell, Inouye, and Dorgan.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good morning. The committee will come to order.

This morning we will receive testimony on very important draft legislation related to the Indian provisions of the Elementary and Secondary Education Act. The main authorizing legislation for the ESEA will be debated on the Senate floor beginning next week, so this hearing is timely, indeed.

The two drafts are, first, draft amendments to the education amendments of 1978 related to Bureau of Indian Affairs [BIA] schools; and, second, draft amendments to the Tribally-Controlled Schools Act of 1988.

As a former teacher and one who knows all too well the problems faced by Native youth, I feel very strongly that education holds the key to both individual accomplishments, the promotion of developed Native communities, and real self-determination.

In the area of Indian self-determination, it is appropriate that the drafts before us stress local tribal flexibility in developing education programs, and continue the trend toward increasing tribal contracting of Federal services and programs.

As we have done for other programs, such as job training, alcohol and drug abuse, and others, I am supportive that any effort to integrate and coordinate existing programs provided that integration brings greater efficiency and improves the services to intended users.

With nearly $900 million in facility needs, a long-term solution to school construction continues to be elusive. Realistically, Federal appropriations alone will not eliminate the backlog, and I feel very strongly that creative financing mechanisms, such as co-financing and bonding, need to be explored if we are to succeed in eliminating this backlog.

The staff brought to my attention a very interesting article about a Navajo lady by the name of Delphina John who is doing an outstanding job in Shiprock, NM, and I am sure she's not the only one. She recently received a $25,000 National Teaching Award from the Milliken Family Foundation for her extraordinary ability to help youngsters get into college by combining the Navajo traditional cultural way of teaching with modern education processes. I want to include that in the record; it is a very interesting article and I would commend that to anybody to read.

[Article appears in appendix.]

The CHAIRMAN. With that, I will submit the rest of my statement for the record, since Senator Inouye has limited time here this morning.

[Prepared statement of Senator Campbell appears in appendix.]

The CHAIRMAN. Would you care to make an opening statement, Senator?

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator INOUYE. Mr. Chairman, I thank you.

I would like to assure the witnesses that although I may not be here, I will be studying their testimony, because I agree with the Chairman that education is of prime importance to us.

The CHAIRMAN. With that, we will go ahead and start with the only panel we have. We requested Assistant Secretary Gover to come over but he was detained and couldn't be here, so we will just have one panel. That will be Carmen Taylor, the executive director of the National Indian School Board Association, from Polson, MT; Roger Bordeaux, executive director of the Association of Community Tribal Schools, from Agency Village, SD; Mark Sorensen, executive director of the Native American Grant School Association of Winslow, AZ; Angela Barney-Nez, the executive director of the Navajo Area School Board Association from Window Rock; and John Cheek, the executive director of the National Indian Education Association, of Alexandria.

We will just go ahead and proceed in that order. Your complete written testimony will be included in the record, so if you would like to abbreviate, that would be fine.

We will start with Ms. Taylor.

STATEMENT OF CARMEN TAYLOR, EXECUTIVE DIRECTOR, NATIONAL INDIAN SCHOOL BOARD ASSOCIATION, POLSON, MT

Ms. TAYLOR. Good morning. I would like to take this opportunity to thank you and the staff for providing this opportunity, and for the work that they have done on the drafts of the bill.

I am a member of the Confederated Salish and Kootenai Tribes of the Flathead Reservation. Our office is located on the Salish Kootenai College campus, also located on that reservation. Our organization represents about 90 schools within the BIA-funded system, and I would like to just preface my remarks this morning by saying that the three organizations—the National Indian School Board Association, the Association of Community Tribal Schools, and the Native American Grant School Association—have worked together for over 2 years with our respective constituencies in try-

ing to come up with a version of a bill that would be beneficial to all of the schools that we work with.

So this morning I will address two specific areas, but I just want to say that the other areas that will be addressed by the other organizations are areas that we are very much concerned about, as well. I am going to address two areas today. One area has to do with school board training.

I have been working with the National Indian School Board Association in providing training to schools since 1983, and I might say that during that time the training needs have changed significantly. Although we still have new board members and new policies and regulations that school board members need to learn about, the need now for doing a budget setaside to do a national conference or a national training like we have done every year, is really no longer a need. The schools have many more needs now for specialized training, so we have recommended—and it has been accepted—that the training will no longer be done through a setaside, but that the money would go back out through the formula to the schools, and the schools would make those determinations about what their training needs are.

I guess I would just like to really encourage keeping that as part of S. 2 as we move through this process, because the needs are much more specialized at this date.

The other area that I want to talk about is local control of education functions. Within the BIA system there are offices which are considered mid-management level offices, and they are called "education line offices." In many areas, we have gone from having primarily BIA-operated schools to now having primarily tribally-controlled schools. So the need for those offices really needs to be reviewed and redefined.

There were many of us who felt that those offices should be done away with completely, but in working with our constituencies there are many who feel like that is not necessary. So what we are proposing in this legislation is a tribal option to redesign those offices. This would be a mechanism for increasing tribal contracting authority.

There have been at least two cases that I know of, one in North Dakota and one in Oklahoma, where tribes have made an attempt to contract some portions of their education offices at the Agency or Area level, and in both cases those have been denied by saying that those are inherently Federal functions that cannot be contracted. And we agree that there are some areas that are inherently Federal functions, some of the compliance and oversight matters; but currently, we have BIA adding new staff to the education line offices in the area of technical assistance. Certainly, those are areas that I think don't fall within what we would call "inherently Federal functions."

So what we are proposing is that at least there be a tribal option for tribes and/or local schools to contract and take over more of those services from BIA. We feel that they can better meet the needs. In the current situation, where the BIA is hiring more staff to do training and technical assistance in the area of school reform, there are only generalists who will not be able to meet the specific

needs of the schools out there. We do not feel like this is the best approach to providing training and technical assistance.

So our recommendation is to accept the provision that we've recommended on local control of education functions. In doing that, it would also include tribal divisions of education as part of that process. We are supportive of attempting to have tribal divisions of education begin to take over more of the services provided to schools.

Those are the only two areas that I am going to address this morning, but I want you to know that the areas that Dr. Sorensen and Dr. Bordeaux will be addressing are areas of particular concern to us as well.

Thank you.

[Prepared statement of Ms. Taylor appears in appendix.]

The CHAIRMAN. Okay. Thank you, Ms. Taylor. I appreciate it.

We will just proceed with the list as I mentioned it, with Dr. Bordeaux next, please.

STATEMENT OF ROGER BORDEAUX, EXECUTIVE DIRECTOR, ASSOCIATION OF COMMUNITY TRIBAL SCHOOLS, AGENCY VILLAGE, SD

Mr. BORDEAUX. Mr. Chairman and Mr. Vice Chairman, thanks again for allowing me to testify before this committee. I think this is the third time that I have testified almost exclusively on this issue which I am going to deal with today, and that is facilities.

My name is Roger Bordeaux. I am a Sicangu Lakota from the Rosebud Reservation in South-Central South Dakota. I am currently working as the superintendent of the Tiospa Zina Tribal School on the Sisseton-Wahpeton Reservation in North and South Dakota, and I also serve part-time as executive director of the Association of Community Tribal Schools.

I think the committee is well aware, and all the members are well aware, that facilities is a real huge problem out there, and it has been a problem for a long time. The BIA, based on their own competence, has created a billion-dollar backlog. They have told this committee that they have an annual $70 million deterioration rate, and the General Accounting Office has done reports about the facilities, and I think everybody knows that something needs to happen out there. When you look at what the House did with their proposals for education amendments, and what the draft does for this committee, there have not been a lot of new things that have been proposed.

We have proposed a number of different things, and I think the biggest one and probably the most controversial one is setting up a capital improvement and investment account for every school to cover two specific areas. One area is to cover long-term replacement of facilities, where every school would get a certain amount in an account that would build up over a 30-year period; and with the money that is put in, plus the interest money, based on size of enrollment, the school would be able to replace their facilities every 30 or 40 years.

So as an example, in the school that I'm at, Tiospa Zina, we would get about $300,000 a year that we would put into an account that would stay in that account and not be used until the school

needed to be replaced, 30 or 40 years down the road. We would get that $300,000 every year for that 30 years, which might come out to only $9 million; but if that's invested properly over a 30-year period, it should at least turn around three times. We have about 500 students, so we could build about an $18 million facility 30 or 40 years down the road.

The other part of this capital improvement account is a different account that would take care of what the BIA calls right now "Facility Improvement and Repair Projects, Minor Improvement and Repair Projects, Safety Violations," and other things that are outside of Operation and Maintenance. Those kinds of projects would mean boiler replacement, roof replacement things, other stuff dealing with major things that have to be done every 5 or 6 years, a lot of preventive maintenance things.

The same dollar amount, based on the enrollment of the school, would go into an account for each school system.

With this capital improvement account, there would be an account for each school, one for FI&R projects, one for construction projects. The best part of this deal is that it's no new money. It is redefining what you currently appropriate for construction projects and FI&R projects. On an average over the last 10 or 12 years, according to appropriations data, the Federal Government has appropriated between $60 million and $80 million a year for FI&R and/or construction projects. This capital improvement account would cost, based on our estimates, about $52 million a year to appropriate.

What I would like to do is leave this document for the record, which is a listing of schools, based on their average membership, and it shows you what each school would get in these two different accounts, going all the way down from the highest school, having over 1,100 students, down to the school that has 15 or 20 students.

The CHAIRMAN. We will place that in the record.

Mr. BORDEAUX. The other part that I want to submit for the record in addition to my testimony is something that I handed out. It talks about a constrainment of O&M funds. Remember, we talked about the BIA having trouble maintaining their facilities. This is, again, a document from the Tiospa Zina Tribal School. From fiscal year 1993 to fiscal year 2000, which is the current school year that we're operating under, this is the need, the appropriated amount, and the shortfall that we have for operation and maintenance costs. That covers janitorial services, utilities, safety, refuse, all the stuff that is needed for day-to-day operation of the facility.

So over those eight years, our school has lost $1.2 million based on our needs, and that is really clear evidence to me that the BIA has not been able to convince the right people to give enough money to us just to maintain what we have. So when they don't give Operation & Maintenance funds, it adds to backlog that we have, and the backlog adds to the construction need. The BIA has, I believe, 99 schools that have submitted applications for new school construction, so this is just another illustration of what's going on. And you multiply this times 185 schools, and it's real easy to understand why there is $1 billion backlog.

We have also proposed some other things to the committee in regards to allowing schools some local decisionmaking, in regards to some of the investments that they use in allowing them to use up to 5 percent of their locally-generated revenue to defray the costs of bonds or leasing initiatives.

We also proposed some language that would allow for tax-exempt federally-insured tribal bonds; that was in our proposal.

One of the other key things is that because of the BIA's problem in not being able to build facilities, tribes and tribal schools have gone out on their own and have built facilities, either through using funds from the State, using tribal funds solely, or selling bonds—in our case, the tribe sold $2 million in bonds, and the school is paying that bond off on an annual basis. But we chose to do that, and what the BIA is going to tell us now is that because we took the initiative in doing that, they're not going to allow us to add that to operation and maintenance as a facility. And in some cases, it's even bigger, where they're not allowing charter schools to be in the facility as Federal schools, and a bunch of other weird things. So that's one of the other key things.

I think the very last issue that I want to talk about is some of the stuff in the tribally-controlled grant schools provisions that have been proposed. There are a couple things in there that at least need to be talked about.

One is in regard to the payment structure that we currently operate under. The schools currently get two payments of 50 percent, and the BIA-operated school systems are allowed an 85 percent drawdown on their accounts effective the beginning of their school year, which is July 1. So we propose the same amount of 85 percent, and apparently in the current language there is a reference to 80 percent. Our speculation is that the BIA feels that there might be some schools that might fall below that 80 percent threshold in regards to enrollment for the coming school year. So we would like to keep it at 85 percent to hold parity with the BIA-operated systems.

The last thing that we want to make sure we get on the record is that we oppose any attempt to have only the tribes be the grantees for the school systems. The tribes are already authorized to be the grantees, if they choose, under current law, and there is no reason to put that restriction on there. A little over one-third of the schools right now are operated directly by tribal governments, and the other two- thirds are authorized by tribal governments to operate as separate school boards, separate from tribal councils. And we would like to leave that option available and have some of that local control still be available to the schools instead of having just the tribal government be the only one.

I think that's all I want to talk about today. I hope that this committee takes really seriously the problem of the billion-dollar backlog. Something needs to happen; I think that even though the President made a commitment of putting a lot of money into school construction this year, when you look at what's going on with the budget resolutions and everything like that, it's starting to sound more and more unlikely that that $300 million will hold out through the next 6 to 9 months, when the appropriations start to go through.

Again, thank you, Mr. Chairman, for allowing me to present this testimony.

[Prepared statement of Mr. Bordeaux appears in appendix.]

The CHAIRMAN. Okay.

I might tell you that this committee has always been very serious about Indian education, but we're not the only committee. There are 100 Senators and 435 on the other side, and the priorities of many of our colleagues are not the same as the priorities of this committee. I was reminded that even last year, there was a potential movement—that didn't come to the floor, but almost did—to transfer money out of the Indian Education Fund into funding for the NEA. And we talked to the sponsor of that amendment, and after he saw some of the statistics of what was happening in Indian education, he decided not to pursue that amendment, so we talked him out of it.

But there's a lot where we can't talk them out of, we just have to go down and battle and do the best we can.

How is your schedule, Senator Dorgan?

Senator DORGAN. Let me just take 1 minute. We have a Defense Appropriations Subcommittee hearing in 5 minutes with the Secretary of Defense.

The CHAIRMAN. Why don't you go ahead?

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. I apologize for having to stretch my time here.

I have read most of the testimony and I appreciate very much the testimony that I've heard. I wanted to make a point. The Chairman made the point, and it is absolutely accurate, that we're a committee that is not only sympathetic but determined to try to do something to improve Indian education but we're just one piece of this puzzle. We need to continue this battle. The pictures that I see at the side of the room are pictures that I could have brought here from——

The CHAIRMAN. Those are the pictures, by the way, that we were going to take to the floor if we had to do battle on the floor to defeat that amendment. But we thought some of the people on the committee would like to see those.

Senator DORGAN. Well, you know, seeing is believing, and you could show pictures like that with respect to the Ojibwa School—I will show some at some other time. The Ojibwa School, the Cannon Ball School which is a public school but has no tax base—what is happening here is not only unfair, but an abrogation of the trust responsibility that Congress has for the education of Indian children.

As you were testifying I was thinking of Joyce Burr, who runs the Circle of Nations School—and she is asking, incidentally, that I submit some testimony on her behalf, which I will do for the record, with your permission.

The CHAIRMAN. Without objection.

[Prepared statement of Ms. Burr appears in appendix.]

Senator DORGAN. The Circle of Nations School has 200 at-risk youth in grades 4 to 8, serving over 30 tribal areas in 18 States. I was there 1 day, and Joyce told me about these kids—I have met

those kids who go to that school many times—and in particular she told me about a young child who was sent to that school, who came from a terrible kind of circumstance. This school closes for Christmas and they send the children back to the reservations, and then they come back after Christmas. And she said a 4th grade child came to her office and asked to see her, and she came into the office and said that she would like to be able to stay there when they close the school for Christmas. She didn't have anyplace to go, but she wondered if they would please let her stay at the school during that period over Christmas, and this little girl said that she promised that she would not eat very much food if they would let her stay at the school.

You know, when you hear stories like that it just breaks your heart. You really feel a responsibility that at that school, and at every school, we have a responsibility to make sure these young children have the same opportunity in our classrooms as other children across the country. In this school, incidentally, we need a therapeutic model, which costs more money, because you must not only educate, you must address the other problems that these kids bring to that school. If you don't do that, you are wasting a lot of money.

So we have a lot of challenges. Your testimony is helpful and we appreciate all of your being here. I might also say that the Chairman of this committee is a strong and assertive voice on these issues, and I am proud to work with him and Senator Domenici and my colleagues Senator Conrad and Senator Inouye.

We need to make progress. The President, in his budget request, is making progress; not enough, but making progress. We are moving in the right direction, but we need to do a lot more if we're going to solve these problems.

Mr. Chairman, thank you for allowing me to say this.

The CHAIRMAN. The tragedy of that story was that the youngster probably wanted to stay at school because things were worse at home, and that's something we can't solve.

Senator DORGAN. Exactly. The child felt she had no place to go, and so was wanting to stay at a school that was closed, and promised not to eat much food. But it describes the difficult and desperate circumstances that some of these children face. Our responsibility is to help deliver to these children the services, the help, and the education they need. And regrettably, we're not doing that. Through these classroom doors walk some young children who are not having the same opportunities as other children, and that's unfair. I have told the story about Rosie Two Bears at Cannon Ball so many times, but it's not fair to Rosie Two Bears and others who walk through those classroom doors and find inferior educational opportunities, because it is our responsibility to those children to say, "We want to help you. We want you to have an even opportunity here in this education system."

So again, Mr. Chairman, thank you for allowing me to say this.

The CHAIRMAN. Thank you.

Mark, if you would like to proceed, please.

STATEMENT OF MARK SORENSEN, EXECUTIVE DIRECTOR, NATIVE AMERICAN GRANT SCHOOL ASSOCIATION, WINSLOW, AZ

Mr. SORENSEN. Thank you, Mr. Chairman, Honorable Senators.

First I would like to state, in response to Senator Dorgan's comments, that we do really appreciate what this committee has done in the past and what it continues to do. We recognize that. In fact, one of the honors that we have in being here is knowing that we have a sympathetic ear, and sometimes that's not what we get. So we appreciate it very much.

I am Dr. Mark Sorensen. I am the executive director of the Native American Grant Schools Association, and also executive director of Little Singer Community School, located in the southwest corner of the Navajo Nation.

I also have a story to share with you, and it relates to the point that I would like to raise, which is that you said earlier, Senator, that you encouraged creative approaches to solving these problems. We feel that charter schools are one of those creative solutions—charter schools, working in combination with grant schools.

In our particular school we have a kindergarten through 6th grade BIA-funded program. That program, because of the BIA's stipulation that came through the appropriations, does not allow extension and grade-level expansions. We have children who are coming to us, asking to be retained in the 6th grade so that they could stay in our school rather than have to go elsewhere to school, to Winslow.

Last week, before I came out here, there was a bomb threat in junior high in Winslow, and the children had to be evacuated. These children are terrified of having to go into that kind of situation. We did come up with the alternative of creating a charter school to go along with our grant school, and we have a charter junior high school as well as a grant school, funding kindergarten through 6th grade.

I would like—and it's written in my testimony, too—I would like to encourage this committee and the entire legislative process—as we have suggested in our legislative work that our three organizations have done, we would really encourage you to support these kinds of efforts, of combining this new movement, the charter school movement, with the grant school movement.

I would like to point out that currently, out of the 187 BIA-funded schools, 126 now are grant schools. That has happened since 1988, when the law was passed. Prior to that, in 1975, the Self-Determination Act was passed, and that allowed contracting. Contract schools did not become nearly as popular as grant schools have become, and the reason for that is that it was too complex. Congress, in their wisdom—and I have to say that this was wisdom—created an opportunity for local school boards to create these grant schools. It was a wonderful opportunity for us. We have, in fact, become more tribally-controlled now than ever, and it is because of this Public Law 102–97.

So we would encourage the Senators and the committee to keep this law going the way it is. Some have suggested that it should go just to the tribes and not directly to the schools. We would like to suggest that it works very well, going through the tribes to the

schools. It gives the tribes, as Dr. Bordeaux has suggested, as it stands now the authority over the schools. But the fact that the funds go directly to the schools allows that local control that is so important. It has worked well. We think, obviously, in order to learn to ride a bike you have to fall off and scrape your knees sometimes, and that certainly has happened, but we feel there is certainly evidence to show that the communities are able to get back up and ride and do it appropriately and do it effectively.

I would like to encourage the development—and perhaps the Senators can even think about language that would support—the kind of creative opportunities that the local tribally-controlled schools, the grant schools, have done. And certainly, one of these is the limitation that has been placed on facilities and on grade level expansions. Charter schools sometimes are the only opportunity left to us, and we hope that you encourage this.

I would also like to say, as my colleagues have said, that in my 25 years of working in Indian education, this is perhaps the most significant cooperation I have seen among all our tribal school board associations in working together on legislation like this. So what you have before you, I believe, is a consolidated group. Certainly, we don't see everything exactly the same, but we have agreed to agree on this legislation. I commend my colleagues, both Dr. Bordeaux and Ms. Taylor, and also the Navajo Area School Board Association.

So I appreciate this, and thank you very much.

[Prepared statement of Mr. Sorensen appears in appendix.]

The CHAIRMAN. Thank you.

Angela, if you would like to proceed?

STATEMENT OF ANGELA BARNEY-NEZ, EXECUTIVE DIRECTOR, NAVAJO SCHOOL BOARD ASSOCIATION, WINDOW ROCK, AZ

Ms. BARNEY-NEZ. Thank you, Senators, and Chairman. My name is Angela Barney-Nez. I am from the Navajo Nation.

[Remarks made in native tongue.]

I am from Tohatchi, NM. I was born and raised on the Navajo Reservation, up on the top of the Chiska Mountains. That's where I'm from. I am currently the director of the Navajo Area School Board Association, and this association has been involved in the original development of Public Law 95–561, which was back in the mid-1970's.

Most recently we have been involved in the development of a position concerning this Public Law 95–561 and Public Law 100–297 within the past 2 years, and we've been involved in developing this position with other entities of the Navajo Nation. We worked very, very hard to develop a comprehensive position on these amendments.

The position has been adopted by the Navajo Nation, and our position from the Navajo Area School Board Association has been incorporated and we support the position of the Navajo Nation in this draft legislation.

In our testimony today from the Navajo Area School Board Association we would like to address three areas.

One is the role of school boards in hiring educators. In this language, NASBA supports the current language. We see that the cur-

rent language in the statute provides local school boards with a decisionmaking role at the local level, but subject to being appealed by the principal and the superintendent. The line officer can overturn the school board for good cause and in writing; this is the current language. We support this. In our tribe, local control is a Navajo Nation law. So we feel that this particular current language is okay.

The proposed changes are unwise and not workable—that is, in terms of the role of the school board in hiring educators.

Second, in educational standards, the Navajo Nation has proposed language which would accomplish two important things. First, it would simplify it so that everybody could understand it, and second it would clarify and simplify the process by which our tribe can promulgate its own standards. We strongly urge the committee to review the Navajo language and consider accepting it verbatim into the statute.

Third is the accountability issue. The Navajo Area School Board Association strongly supports the Navajo Nation's position to require tribes that authorize contract and grant schools to develop systems to exercise oversight over their schools. This is consistent with tribal sovereignty and the inherent rights of tribes to make key decisions related to the education of their children. The great majority of contract and grant schools do an admirable job of educating their students. For those who do not, there is no clear responsibility concerning who is to step in and do something. On Navajo, it has fallen to the Navajo Nation to step in to prevent the school from being reassumed by the BIA.

In my years of working with the Navajo Nation as an education specialist for community schools development, I have been involved with four schools on the Navajo Nation that have encountered this situation. I work extensively with connections between the school and the community, and also how it relates to the Navajo Nation as a nation in terms of school development.

In section 1121, which we are requesting that the language be inserted verbatim into, the language reads, "Indian tribes which operate BIA-funded schools or which have authorized Indian organizations to operate BIA-funded schools, shall, within 18 months of the passage of this act, develop and establish uniform fiscal and fund control standards and systems to ensure that the Federal funds provided to the Indian tribes and tribal organizations are utilized in accordance with applicable Federal requirements, and for the education of the Indian students for which they are provided. Funds are authorized to be appropriated directly to Indian tribes for this purpose." This is the language that we are asking to be inserted.

NASBA has been involved in converting our schools. We have 49 BIA-operated schools, and we have been on a plan to have 10 schools a year assume a grant under Public Law 100–297 for the last 4 years. We have also supported these schools to continue to work with their communities so that those areas which connect the school and the community are incorporated in their overall plans.

We strongly support tribal-Federal relationships where it allows for shared responsibility and shared accountability.

I thank the committee for the opportunity to testify here. I want to encourage that we continue to work and put forth our efforts so that more of the Navajo Nation's position can be incorporated into the final statute.

Thank you very much.

[Prepared statement of Ms. Barney-Nez appears in appendix.]

The CHAIRMAN. Thank you.

Mr. Cheek.

STATEMENT OF JOHN CHEEK, EXECUTIVE DIRECTOR, NATIONAL INDIAN EDUCATION ASSOCIATION, ALEXANDRIA, VA

Mr. CHEEK. Good morning, Chairman Campbell and members of the committee. My name is John Cheek and I am a member of the Muscogee Creek Nation of Oklahoma. I am executive director for the National Indian Education Association, a nonprofit organization with over 3,000 members. I bring greetings from Dr. Gloria Sly, the NIEA President, and our Board of Directors. Thank you for allowing NIEA the opportunity to provide testimony today.

Today's hearing is one of the more challenging to prepare for in light of the complexities of operating education programs within the BIA system. You have seated at this table today what I consider the experts in the field of BIA education programs. The respective organizations represented here have each worked on their own versions of what the proposed legislation governing BIA grant and contract schools should look like in the amended laws.

NIEA respects the positions that these organizations have taken and looks to their expertise to determine what the final version of the legislation looks like. While we know in general what these organizations are proposing, we have not had the same opportunity to see what the BIA is proposing. We are concerned that we are in the ninth hour, and little time is remaining to arrive at a consensus among all the stakeholders on what will be included in any of the amended laws affecting BIA schools.

We ask the committee to ensure that a legislative solution is arrived at as soon as possible.

I will not dwell on the issues covered by the other speakers, and request that our statement in full be included for the record.

The CHAIRMAN. Without objection, it will be.

Mr. CHEEK. I would like to bring to your attention another program which was last reauthorized in 1994, during the previous ESEA authorization.

Programs authorized under the Office of Educational Research and Improvement—they are often referred to as OERI—were also reauthorized. Programs under OERI jurisdiction are mainly those that administer the Department's statistical and research programs. Also included under this reauthorization, the administration has proposed to eliminate the current 15 Regional Comprehensive Centers. The administration proposal redirects the funding for these centers to the 100 school districts with the largest numbers of children in poverty.

NIEA supports keeping the current Comprehensive Centers in as they are currently administered. Prior to 1994, there were six centers specifically dedicated to the needs of Indian projects, including

those Office of Indian Education Programs administered by the BIA schools.

While an evaluation of the current Comprehensive Centers has yet to be completed, our early findings are that they have not done a very good job in meeting the technical assistance needs of Indian schools. The new proposal definition of focusing resources on the districts with the highest numbers of children in poverty would effectively eliminate any training and technical assistance programs to Indian schools and programs.

While we have the highest levels of poverty in the country, we by no means make up the largest school districts. I bring up this issue because reauthorization of OERI programs will be occurring at the same time as the ESEA reauthorization. To date there has been little activity by the authorizing committees to begin the process of reauthorizing these programs, but they should be beginning the process soon, if they have not already.

I should mention that the new proposal would create a categorical center devoted entirely to the needs of Indian education, but there will be only one designated center, and it would be hard pressed to meet the technical assistance needs of over 1,200 Indian projects in 43 States.

My closing comment in relation to today's hearing is that NIEA would like to see a closer link between the laws being amended and the Executive order on American Indian and Alaska Native education. The order provides for a collaborative working arrangement among all Indian education stakeholders in Washington and in the field. By focusing on the many goals of the order, we can begin to reverse the many problem areas in student achievement that continue to plague Indian country.

Thank you for listening to our concerns, and I would be happy to answer any questions.

[Prepared statement of Mr. Cheek appears in appendix.]

The CHAIRMAN. Okay. Thank you.

Let me just jot a couple notes to myself here. Let me start with Ms. Taylor.

You mentioned that several programs were denied by the line officer because, I guess, according to that line officer, they couldn't be contracted under the law? Is that correct?

Ms. TAYLOR. That is correct. There have been at least two instances that I know of where the tribes have wanted to take over some of the education functions, and they were told that they could not because of these "inherently Federal functions." But we believe that there are many functions that could be taken over by tribes, particularly in the area of training and technical assistance.

The CHAIRMAN. Okay. Well, you might offer some suggestions. I understand that staff is going to meet with all of you, or at least some of you, this afternoon sometime. Maybe you could offer some suggestions about how we can change that so that they won't have that same problem.

Ms. TAYLOR. Okay.

The CHAIRMAN. Also, you recommended that the new school board members receive 40 hours of training in several areas. Since anybody can run for the school board, that would mean that after they are elected they would go through some training?

Ms. TAYLOR. Right. They would be required to have at least 40 hours of training in some specific areas.

The CHAIRMAN. Do you think that should be available to all tribes? And how would you suggest that be funded?

Ms. TAYLOR. Well, currently there is money that comes off the top of ISEP that is used to do national training for school boards. What we were proposing is that rather than that money being set aside to do national training, that would be distributed through the formula back out to the schools, and that the schools would—it wouldn't be a lot more money that would end up back at the schools, but they could then use that money to contract to do training for their specific needs.

So it wouldn't be asking for any more money; it would just be redistributing money that currently is appropriated.

The CHAIRMAN. And do you feel that tribal communities have the appropriate personnel available to address the training you need?

Ms. TAYLOR. I do. I think if they don't have them on site, then our organizations are also set up to do that, so we can help them set training up that addresses their needs.

The CHAIRMAN. I see. It could be a group.

Also, one of the goals of the Goals 2000 Program was to have them place computers in all BIA schools. Has that been happening? How close are we to that goal, do you know, by any chance?

Ms. TAYLOR. Do you want to answer that? I visit a few schools that have some computers that are, frankly, antiquated.

Yes; go ahead.

Mr. BORDEAUX. Mr. Chairman, I was part of a reinvention lab for the BIA on an initiative to try to connect all of its classrooms to the Internet by the year 2000. The year 2000 has passed, and I think that—the latest records that I've seen, they project that they have about 60 percent of the schools connected to the Internet, but the percent of classrooms connected is less than that. So if you look at 185 schools, probably 120 or so are connected as a result of what the BIA did. There may be more that were connected without the BIA's help at all, too, but you figure about two-thirds of the schools are connected, and less than that at the classroom level.

The CHAIRMAN. Thank you.

Since you have the microphone there, Dr. Bordeaux, I was looking at this chart you have, the constrainment of operation and maintenance funds, and you said that this facility has a $6,700,000 backlog. How were these needs established in this left column?

Mr. BORDEAUX. If you look at the back sheet of that document, there is a document up on top that says "Operation and Maintenance Distribution for Aberdeen," and it says, "Area by Agency by Location." And if you put it under a magnifying glass, the bottomline is that at the lower right-hand corner there is a location total, which is $421,057. That's what we were supposed to get based on the BIA's system of using the facilities and the inventories. So it is broken down by utilities, custodial, preventive maintenance, unscheduled maintenance, isolation, and location program support.

So this year we were supposed to get $421,000, and we actually received $295,000.

The CHAIRMAN. All right. We'll go over this a little more carefully.

By the way, some of your testimony we didn't get until this morning. Staff tells me that we didn't get this chart until this morning, so we haven't had a chance to really look at it. But we will go over it.

Your proposal to set up two accounts, that would be like a capital improvement account or some kind of a trust fund, I assume?

Mr. BORDEAUX. Yes.

The CHAIRMAN. All right. And perhaps we have a different reading, too, of the draft bill, because as I understand it it does require that a long-term construction and replacement list for all BIA-funded schools be established, with a plan for replacing all schools over a 40-year timeframe.

Mr. BORDEAUX. Yes; there is a plan for a 40-year replacement listing, but there is nothing on how that listing is to be accomplished.

The CHAIRMAN. I see.

Mr. BORDEAUX. And that's where the problem lies.

The CHAIRMAN. All right.

Mr. Sorensen, first let me tell you that I was very interested in your comment about trouble with youngsters, perhaps gang activities. In addition to being on this committee, I am the Chairman of the Treasury Subcommittee of Appropriations, and we have done a great deal of work with the Drug Czar and the ATF that deals with gang activities, and we've noticed, as you probably know, a big increase in gang activities on reservations, particularly if they are close to metropolitan areas like Tucson, Phoenix, and so on. It seems to be seeping out, where young Indian kids are getting involved in that.

So I just want to tell you, even though Winslow is not a big town, if you've been able to prevent that from happening in the grant schools in that area, I really commend you because it's something that we all need to address and face, that our Indian youngsters are being pulled into the same kind of stuff that some of those inner city gang kids have been pulled into. So I did want to commend you for that.

Mr. SORENSEN. Thank you.

The CHAIRMAN. Let me ask you two or three questions.

Your testimony states that "many organizations don't support the idea of a single grant issued to tribal governments, who would then distribute the money to grant schools." What's their objection?

Mr. SORENSEN. Well, what we object to, Senator, is that the suggestion was made—I believe by the BIA—that these grant moneys only go to tribes. Right now the tribes do have the authority—we don't get grants at a local level unless the tribe gives us the authority to do so. In larger tribes, like Navajo, for example, where there are 60-some schools, to have it only go to the tribe means that the tribe becomes another level of bureaucracy.

The CHAIRMAN. Yes; I understand that, but it might be a little different to—I mean, it's probably going to be impossible to cut out the voice of the tribes somewhere in the process.

Mr. SORENSEN. Right. Senator, we are not suggesting to cut out the tribes. We are under the tribes' authority. What we are sug-

gesting is that the way it is right now works well, and we ask you not to go along with the idea of changing it so that the money only goes to the tribe, and then distributed out.

The CHAIRMAN. Maybe I misunderstood that. Thank you for clarifying that.

Regarding the three grant schools of the Navajo Nation, does the charter school pay any costs to the BIA, such as rent of the facilities, heating, electric, something of that nature?

Mr. SORENSEN. Yes; what we have set up is a cost-share agreement, but we would like to point out—and I believe this is in my testimony—that the BIA does not pay one more cent to the schools if there is a charter school there. This is money coming from the State. It is separate money; in fact in many cases, as in my case at the school, through charter we have purchased additional buses, we have augmented the grant school program. So we believe that it is not only cost-effective, we believe that it just meets our needs. As I said, we wouldn't have been able to solve that problem with the kids going into town and getting involved in gangs if we hadn't been able to set up a charter school at the junior high level.

The CHAIRMAN. I understand. Okay, thanks.

Ms. Barney-Nez, I appreciate any suggestions you have for this draft, too. I was writing notes and listening at the same time to your testimony; go over for me once more about that authority of the line officer. Did I understand you to say that the line officer can overrule the school board?

Ms. BARNEY-NEZ. Yes; I am saying that the current language under the authority of school boards in section 1131 provides the local BIA school boards with a decisionmaking role at the local level, but subject to being appealed by the school supervisor, which is the principal, and also the education line officer, which is the school superintendent.

The line officer can overturn the school board for good cause and in writing. That is the position that we support, and that is the current language.

The CHAIRMAN. Well, I think we probably ought to change that language somewhere in this draft. I've never been on a school board, but I taught school for a lot of years and it sounds—you know, that paternalistic attitude, how the tribes make decisions but can't implement them until they are somehow approved by somebody else. That just goes against my grain as to what local school boards are supposed to do. So we would appreciate your suggestions on making some changes.

We have had a lot of feedback regarding the inadequacy of the current BIA school board standards, and I wanted to ask you, have you read this article that I mentioned when I made my opening statement, or do you know the lady by the name of Delphina Johns from Shiprock?

Ms. BARNEY-NEZ. Yes.

The CHAIRMAN. You know her?

Ms. BARNEY-NEZ. Yes.

The CHAIRMAN. Is that story pretty——

Ms. BARNEY-NEZ. Delphina is my friend. Yes, she is in Shiprock.

The CHAIRMAN. Apparently she is doing a very fine job.

Ms. BARNEY-NEZ. Absolutely.

The CHAIRMAN. I know that one of the problems that we have in education is that—I live on the Southern Ute Reservation, as you probably know, and I know a lot of the Indian kids. They get caught in a kind of a crossfire; they come to school and they learn things in school, and then they go home and they learn from their grandmother or grandfather something different, a traditional way of teaching that is not always done in a current, modern school. I know those people who have looked to try to find a way to interact, to be able to teach traditional ways in schools, too, makes a big difference on a youngster's ability to move ahead, so he doesn't get totally angry at the school because he's learning different things from different people.

So I didn't know if you knew her or not, but it sounds like she's done a very good job.

Let me ask you one thing. I do support local school boards, but if—in the Navajo Nation, you have different school boards for each school?

Ms. BARNEY-NEZ. Yes.

The CHAIRMAN. How does that interact with the tribal government? Do they have one set of standards that they apply with the local school boards?

Ms. BARNEY-NEZ. The Navajo Nation has endorsed the North Central Association, NCA, standards and has a "51st State" Office for Navajo, which our tribal council has directed that all schools located on the Navajo Nation go with the North Central accreditation, which has been endorsed by the council.

The CHAIRMAN. Okay. The States do the accrediting——

Ms. BARNEY-NEZ. Right.

The CHAIRMAN [continuing]. And the school boards determine curriculum and so on?

Ms. BARNEY-NEZ. Yes.

The CHAIRMAN. So the tribal council does that too, they have sort of a reservation-wide accrediting program?

Ms. BARNEY-NEZ. Yes.

The CHAIRMAN. Perhaps, to John Cheek, to come up with regulations to guide the implementation, the draft amendments to the 1978 education amendments provide for a three-step process, John, involving regional and national consultation with tribes, and finally, a negotiated rulemaking requirement. Does the NIEA support that framework? And if it doesn't, tell us why not.

Mr. CHEEK. All right. From the information that I have—and I am by no means an expert in either of these two laws—but the way that we understand it is that under the negotiated rulemaking idea, the department would develop initial drafts to look at and then circulate those among the constituents.

Our position at the moment, I think, would be that representatives from both sides sit at the same table and really hash this thing out before something is developed. I think the past has shown that the BIA will take a paternalistic attitude in some matters if you allow it to, and I think, given all the collaborative work that has gone into it thus far, to date, we should extend that all the way up through the line.

The CHAIRMAN. Okay. I thank you.

Well, I have no further questions. We are going to proceed to work on these bills and see if we can't make them a larger part of the ESEA starting next week, and I hope that we are able to incorporate your suggestions into the bills as we move along.

I certainly appreciate your being here; I know you've come a long way, and thank you for attending.

With that, this hearing is adjourned.

[Whereupon, at 10:30 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Good morning. The committee will come to order. This morning we will receive testimony on very important draft legislation related to the Indian provisions of the Elementary and Secondary Education Act [ESEA].

The main authorizing legislation for the ESEA will be debated on the Senate floor beginning next week, so this hearing is timely indeed.

The two drafts are No. 1. Draft Amendments to the Education Amendments of 1978 related to BIA Schools; and No. 2. Draft Amendments to the Tribally Controlled Schools Act of 1988.

As a former teacher and one who knows all-too-well the problems faced by Native youth, I feel strongly that education holds the key to both individual accomplishment, the promotion of developed Native communitiess, and real self determination.

In the Era of Indian Self Determination, it is appropriate that the drafts before us stress local tribal flexibility in developing education programs, and continue the trend toward increasing tribal contracting of Federal services and programs.

As we have done for other programs such as job training, alcohol and drug abuse, and others, I am supportive of any effort to integrate and coordinate existing programs provided that integration brings greater efficiency and improves the services to intended users.

With nearly $900 million in facilities needs, a long-term solution to school construction continues to be elusive. Realistically, Federal appropriations alone will not eliminate the backlog and I feel strongly that creative financing mechanisms such as co-financing and bonding need to be explored if we are to succeed in eliminating the backlog.

With that, I look forward to hearing from today's witnesses as we strive to reauthorize the Indian portions of the ESEA.

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John wins kudos

Teacher wins $25,000 award

Diana Heil-Staff writer

SHIPROCK - For Shiprock High School teacher Delphina John, encouraging students to excel in school and to be true to themselves was reward enough.

But a $25,000 national teaching award was proof that her efforts are paying off.

John - who teaches social studies - did not know she had won the Milken Family Foundation award, and was kept in suspense Wednesday until all the school board members and students were assembled in Chieftain Pit, the school's basketball arena.

When her name was announced as one of this year's winners, John instantly hugged Glojean Todacheene, a 1994 Milken Family Foundation award recipient sitting next to her, and ran down to the stage to accept the prize.

"I was so clueless," John later told a co-worker.

Mesa Elementary School Principal Todacheene could have spilled the beans. She was invited to the awards ceremony because she had won in the past, and she was John's home economics teacher at Shiprock High.

"This young lady really walks her talk," Todacheene said. "She's an alcohol- and drug-free person."

The $25,000 check will be handed to John during a ritzy awards dinner at a Los Angeles hotel ballroom in June. Until then.

Diana Heil/The Daily Times

Shiprock High School teacher Delphina John is surrounded by students Wednesday after the announcement of her winning the Milken Family Foundation award.

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she can begin dreaming of how to spend the unrestricted grant.

"Delphina can do whatever she wants with it," said Christopher Crain of the foundation.

John did not apply for the award, nor was she nominated for it. Rather, Milken educators are selected based on guidelines established by the nonprofit foundation based in Santa Monica, Calif. The Department of Education in each of the participating states appoints an independent committee to evaluate candidates for selection.

John won the prize because of her commitment to the community, Energetic and creative are the two adjectives that best describe her.

Through the Student Peer Educators self-esteem group, she helped tackle the high rate of teen-age alcohol and drug abuse among local youth. The peer educators are linked to the national youth leadership organization, United National Indian Tribal Youth, and do community-service projects.

To promote pride in Navajo culture, John incorporated traditional teachings into the curriculum, developed the Shiprock High pageant and Native Culture Day.

This year, New Mexico had four winners out of a pool of 60 candidates. John is the only winner from San Juan County.

Nationwide, 171 educators from 41 states will get awards.

"Our goal is to identify outstanding educators," Crain said, "give them some public recognition and try to elevate the profession."

John graduated from Shiprock High in 1983, earned a bachelor's degree and a master's degree in education off the reservation, then returned to teach in Shiprock.

Three people flashed in her mind when she heard the news: Her late father, Thomas Joe, her mother, Alyce Joe, and her son, Jukari C. Davis.

She told the audience her father, who passed on his love of Navajo teaching to her, died 10 months ago.

Of his six children, John is the only one he would wake up every morning at 4:30 a.m. She would cook breakfast, then make a Spam, potato and tortilla sandwich, while he taught her about the trials and morals of life.

She thinks of her mother as her mentor, who is always there for her to this day. Her mother always said, "Rewards will come to you if you work hard."

She thought of her disciplined son, Jukari, who is in the 10th grade at New Mexico Military Institute in Roswell.

Her husband, Capt. Randy John of Shiprock Criminal Investigations, in training at the National FBI Academy in Virginia, and her son Randy John Jr., a Kirtland Central High School senior, complete the circle of those who support her.

The Diné teacher saw the award as a triumph for her people.

"Navajo people can do anything they put their minds to in spite of all the obstacles," she said. She has her sights set on becoming a principal some day.

Students swarmed around her on the stage Wednesday.

She understands what it is like to come from a background where alcoholism is a problem. She draws upon her own life, and her experience as a juvenile and adult detention officer in Phoenix and Farmington, to reach them.

"I tell them the only way to get out of it is education," John said. "Some of us are not born with a silver spoon. You have to earn it."

National Indian School Board Association
N * I * S * B * A
B * E * S * T
Building Exemplary Schools Together

P.O. Box 790
Polson, MT 59860
406/883-3603
800-542-4922
FAX 406/675-4801

TESTIMONY ON REAUTHORIZATION OF ELEMENTARY AND SECONDARY EDUCATION PROGRAMS FOR AMERICAN INDIANS
GIVEN BEFORE
THE SENATE COMMITTEE ON INDIAN AFFAIRS
APRIL 26, 2000

Mr. Chairman Campbell, Distinguished Senators of the Committee, Honored Guests and staff;

My name is Carmen Taylor, and I am the Executive Director of the National Indian School Board Association The National Indian School Board Association (NISBA) was established in 1982 for the purpose of providing training, technical assistance, advocacy and networking opportunities. NISBA has nearly 100 member schools – contract and grant schools as well as BIA - operated. Our current president is Ted Lonefrom the Mandaree school located on the Fort Berthold Reservation in North Dakota. Our office is located on the campus of Salish Kootenai College, a tribally controlled college on the Flathead Reservation in western Montana.

Today, I would like to discuss the proposals to review and change the sections of P.L. 95-561 and P.L. 100-297 which establish and provide parameters for the 185 schools serving approximately 50,000 Indian students, which are funded by the Bureau of Indian Affairs. I come to you today to discuss recommended changes in these statutes which my organization has worked on for over 2 years. We have done so as part of a consortium of National and regional Indian education associations, and have

also worked with individual schools and tribes to see that the recommendations we make have the broadest possible support.

We have worked closely with the Senate staff as they have prepared the two drafts they have released. We want to show our sincere appreciation for the effort the staff has made in a short period of time to review and weigh our proposals. We now feel there are staff within the Committee who care and are informed on these issues.

I have been asked to address two issues in particular, and shall do that. However, I will also add, as part of my submission for the oral testimony, a brief list of other areas in which my organization is concerned.

SCHOOL BOARD TRAINING

When PL 95-561, the Education Amendments of 1978, established the framework for Bureau schools, it took the important step of elevating community school boards attached to Bureau schools from purely advisory entities to ones having statutory authorities and responsibilities. School Boards have been involved in establishing and implementing standards, constructing and monitoring financial plans, and making decisions in personnel matters. For the first time, under Assistant Secretary Forrest Gerard, the Bureau realized that school boards affiliated with Bureau schools needed training in a wide variety of areas. The Bureau initially funded this training under the technical assistance capacity, but it was not enough. Soon, the Congress recognized a need to institutionalize this training and established a set-aside under the funding formula for this purpose.

Another factor was also mandating more training for school boards. With the growth of contracting in the 1980s, and then the growth of grants schools in the 1990s, local communities and tribes were actually taking the policy, as well as the programmatic control over education under their wing. This meant a great need for local school board training for contract and grant schools in not only the Bureau programs, but general

topics such as education standards, funding issues, school law, and organizational development and change.

During the 1980s, this training was established under a general training contract with the major Indian Education organizations. My own National Indian School Board Association, received the major contract, with component contracts given to the Association of Community Tribal Schools and the Navajo Area School Board Association. Training was conducted by a series of regional meetings and an annual major convening of all school boards in a central place. Information was general, and tailored to each group by the subcontractor.

Over time, however, the needs have changed. With about two decades of school board training having been accomplished, we now find that most communities with school boards do have a "pool" of people in the community with knowledge on school board topics. What has arisen, however, is a need for more specialized services, support and training for each individual school. For instance, school board members may now understand the ideas of student performance review, but what they need is help on determining how to apply these concepts to their individual school program. For another example, the school board members may know about financial audits, but they may need help in determining which computer software will be best for their school, now and in the future.

It has not been an easy decision for my organization, or those others, but we have recommended, and House and Senate staff have accepted, doing away with the reserved set-aside for the national school board training. Instead, we have recommended that the dollars that were part of the set-aside be distributed through the formula. This results in a slight increase at each school site which school boards can use to procure site specific training to be determined by local needs. We have also reommended, and it has been accepted, that new members of a school board receive at least 40 hours of training in school policy, finance, legal issues and general roles and

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responsibilities. Some States require school board training and this is one way to maintain school board members which are current in pertinent issues which affect schools.

We know doing away with a guaranteed "pot" for organizations to depend upon may not be universally popular with our sister organizations. The organizations should shift their emphasis from a unified contract to providing more tailored services to their member schools. If we improve the services and products, to keep up with the legitimate demands of our constituencies, no organization will suffer. We ask that any request to reinstitute a national or regional training setaside, thus taking the local decision away from the schools, please be resisted.

LOCAL CONTROL OF EDUCATION FUNCTIONS.

One of the premier themes over the last three decades in Indian education has been the struggle of the tribes to obtain and exercise true input into and control over Bureau funded education programs. The Indian Self-Determination Act, the Tribally Controlled Grant School Authority, and the changes in the Bureau system requiring input into Bureau controlled schools have been Congressionally initiated and are major steps forward. However, for each step forward, there has been a resistance from the Bureau, not through malice, but through the very human problem with an institution resisting change. The Bureau does not easily give up control over Indian lives.

We have an instant case in point. One of the areas tribes are most anxious to be involved in are the activities carried on by Bureau Area and Agency offices in support of education. These education activities, or functions, are conducted by Bureau personnel, ostensibly for the benefit of Bureau funded education programs. However, often the Bureau officials in these jobs do not consult with their clients or give them what they need. They set arbitrary amounts that each school is expected to contribute to Agency or Area wide activities (see the generally accepted amount of $10,000 - 20,000/year for technical assistance and training) whether a school receives services of that value or

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not. Currently the Bureau is expanding the number of staff located within education line offices for the purpose of providing technical assistance in the area of school reform. These are generalists who are unable to meet the wide range of specific needs of each school. These decisions are better left to those at the tribal and school levels. Training and tehnical assistance should not be included in the "inherently Federal functions."

Theoretically, tribes may contract these functions from the Bureau under P.L. 93-638, the Indian Self-Determination and Education Assistance Act. However, as a reality, this is problematical. The Bureau has created a designation, called inherently federal functions, as a class of functions which may not be contracted. These are functions dealing with funding and oversight. Even agreeing with this designation as being an exception to contracting authority (and we do make such an agreement for the sake of this discussion) the Bureau refuses to give us a clear and uniform definition of this term, a listing of the functions and jobs covered and a central review spot for application to guarantee careful review. Additionally, to maintain control, the Bureau has taken these functions, and dispersed them to as many personnel as possible, thus arguing none of the positions may be contracted.

We come to the Congress again to ask for justice and a remedy. When the Five Civilized Tribes of Oklahoma asked in the mid 90s to contract some function in the Eastern Oklahoma Office, they were flatly refused any contracting. There are other such instances. We started this reauthorization cycle by supporting Senator McCain's call for "designer agencies and Areas. letting the tribes establish the makeup and structure of the Bureau to meet their needs. However, we now see this may be too radical, since it seemed many tribes were afraid the Bureau would use this to trigger mass bureaucratic cutbacks.

Instead, we are asking for a simple amendment to P.L. 95-561, which will clarify the Self-Determination contracting by - 1) stating that such contracting is permissible; 2) stating that it is at the tribal option and clarifying which parties may undertake to

contract; 3) Give a uniform definition to the term "inherent federal function"; and 4) telling the Bureau to combine jobs to the greatest extent to make more positions contractible. The provision we propose follows:

"All functions related to education located at the Agency or Area level and performed by an education line officer shall be subject to contract under the Indian Self Determination and Education Assistance Act (P.L. 93-638), unless determined to be inherently Federal functions. No function shall be determined to be inherently Federal unless it involves fund distribution, student enrollment verification, grant application or contract for operation of a Bureau program acceptance, or a report required by other provision of law to be filed by a Federal agency. To the maximum extent possible, the Secretary shall consolidate these inherently Federal functions into one position to facilitate the intent of this provision. The contracts under this paragraph shall be made with the school board or the majority of the school boards of an agency or Area, or, at the option of the tribe, with the tribe whose children are being served by the education program within the agency or Area. To the extent more than one tribe is being served by an agency or Area, the contract shall be made with a consortium involving at least the majority of such tribes."

This language will open one of the last closed policy and program areas to tribal input and control. Let us be clear - it creates a tribal option. If tribes wish to maintain the status quo, so be it. This gives the tribes a tool to tailor local services to local needs. If tribes can better meet the needs by contracting, this will provide the vehicle.

It will mean many school boards and/or tribes and tribal departments of education, will take over such areas as technical assistance, training and procurement for their own schools, providing increased service and control to the entire Indian community. It will mean a continuation of Bureau oversight and monitoring in the all important areas of accountability, without intrusive Bureau presence. We ask that it be accepted.

TRIBAL DEPARTMENTS OF EDUCATION

Before I close, I would also like to state we support tribal departments of education. As tribes become more sophisticated and more involved in the education of

their students, a logical progression of the concept of sovereignty is to develop tribal departments of education. They can serve in training, policy, and development support capacities with respect to educators. parents, communities and tribal officials. It is time to give them our support.

CONCLUSION

I thank you again for allowing me to testify today. For over two decades, the Committee on Indian Affairs of the U.S.Senate has been a shield for Indian people. We ask you once again for your assistance.

TESTIMONY BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
APRIL 26, 2000
RELATING TO CHANGES TO PROGRAMS
FOR ELEMENTARY AND SECONDARY EDUCATION
FOR INDIAN STUDENTS

Mr. Chairman, Honored Members of the Committee, distinguished Guests, staff:

I am Dr. Roger Bordeaux. My current position is as Superintendent of the Tiospa Zina Tribal School in Agency Village, South Dakota. I appear today in my capacity as the Executive Director of the Association of Community Tribal Schools, Inc.(ACTS). ACTS represents a significant number of the 124 tribally controlled elementary and secondary schools funded by the Bureau of Indian Affairs. There are over 24,000students in these tribally controlled elementary and secondary programs. The schools are in the States of Maine, Florida, North Carolina, Mississippi, Louisiana, south Dakota, Minnesota, North Dakota, Michigan, Iowa, Wisconsin, Kansas, Wyoming, Oklahoma, Montana, California, Washington, Idaho, Nevada, Arizona, and New Mexico. Our mission is to "assist community tribal schools toward their mission of ensuring that when students complete their schools, they are prepared for lifelong learning and that these students will strengthen and perpetuate traditional tribal societies.

We are here today to talk about the 2nd Committee Discussion Draft of the Senate Committee on Indian Affairs, making changes to programs influencing Indian education efforts. I would like to discuss a problem which is largely neglected in the current draft: FACILITIES AND CONSTRUCTION

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When people involved in Indian education meet, one universal topic of discussion and concern is the terrible state of facilities in general, and needed repair and improvement shortfalls. Many of the facilities we use for providing Indian education services have existed over twice or three times the length of their expected useful life. The facilities are falling down. One Congressional report in the 1908s said we are educating Indian children in facilities in which Federal judges would not allow us to house prisoners. Yet, we have no choice. To date, we have been largely dependent on the Federal government and the Bureau for facilities for our programs, and they have not been forthcoming. The Bureau admits they have at least a $742,640,817 unfunded backlog for education related facilities needs, repairs and replacements (date 1-4-99). Some say the backlog is even higher. Each year, the amount the Bureau requests for upkeep of education related facilities is over $70,000,000 less than is needed *just to stay even. This is programmed failure and deterioration.* The Bureau reports a new school construction need of 99 facilities, yet only has a priority list for 17.

In 1997, the General Accounting Office issued a report that stated the schools "are at a dismal state of disrepair and are generally in worst condition than other schools nationally, even inner city schools." How did we ever come to such a situation??

Simply put, the Bureau has not requested the funding necessary to build new schools or maintain those for which it is responsible. For over 15 years, they have funded daily operation and maintenance at 60% of need. For the last 15 years, they have funded the Facilities Improvement and repair account at less than the annual deterioration rate. With respect to repairs, they have used a top down system for designating repairs which does not take into account the need for all schools for routine maintenance and scheduled upkeep. For years, they have aggregated local projects to be done (often without the input of education officials) and then only asked for the funds needed for some. They have given funds to areas and agencies based on politics, not need, and used a priority system for construction which changes the relative ranking of

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schools from one year to the next. The have done no long range planning or replaced enough schools each year. They have not responded to the system as it spiraled downward, out of control.

Yet, despite the fact that all in the business acknowledge the problem, little is done to remedy it. We support the greatly increased amount requested by the Administration this year for construction of new facilities. However, we have concerns regarding its passage. Also, we do not think, realistically, that a needed $1 Billion dollars in effort from the Congress is likely. We are hopeful about talks regarding more money for tribal bonds, but absent revenues to pay their principle, we doubt this is the answer. We just have to face the fact - **we have to do better with the funds we have. We need a plan for immediate action!!!**

Yet, the draft before us is silent on the problem.

We recommend the following

-the establishment of two accounts for Tribal School Capital Improvement and Redemption/new construction. These funds would be based on an annual payment made to schools based upon the most equitable determiner - size. One of the payments would be placed in a separate account to defray the cost of routine maintenance and upkeep, such as a new boiler and roof repair. Expenditures from the fund would vary each year, depending on need, but the funds which are in the account have the added benefit of being increased by interest. Thus the Federal payment is augments. The second account would be also based on an annual per capita payment and would be for long term accretion and interest bearing. It would remain available to the school for replacement costs, as the school is able and as the school determines.

These seem like such simple ideas, we wonder why they have not been tried in the past. The key is that all schools would be treated similarly, with no school falling through the cracks and becoming part of a backlog. It runs on local control and decision making, taking out at least three bureaucratic levels. ***Best of all, based on our projections, it runs on the current appropriation available. No new money is needed.***

-Schools should be allowed to make a local decision to use up to 5% of their existing revenues and income to help tribal government defray tribal bonds. Some may say that if the schools have "extra" money to fund such efforts, then they have too much money. That is facetious and insulting. If a family makes sacrifice3s in standards of living for medical care for the family, or to obtain more and better housing, do we say they have too much. Are we now in a situation where if people make the sacrifices to

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improve themselves, we have to say, "No - hold them down". Remember, we are talking about local schools and tribal governments taking the extra step to meet what is really a Federal responsibility!!!. We will insist the school program remains accredited and safe, and that all student performance goals are met. However, some savings are possible - we only want the chance to improve.

-As has been done in the past for other groups, let the government allow the issuance of tax exempt, Federally insured tribal bonds for education structures.

-Of particular importance, is the issue of maintaining building built with non-Federal funds. The schools, realizing help from the Federal government is not forthcoming, have applied to a number of States and foundation/tribes for local school buildings. some have been successful in obtaining facilities. Remember THESE ARE PROGRAMS FOR WHICH THE FEDERAL GOVERNMENT IS RESPONSIBLE AND FACILITIES WHICH THE FEDERAL GOVERNMENT SHOULD PROVIDE. Once built, these must be maintained, or rapidly, they begin to go down hill like Bureau facilities and form a health and safety threat to our children.

However, when it comes to maintenance, the Bureau says it will not include these building in the operations and maintenance formula. The reason given is that the money is Bureau money, and it can only be used for federal buildings. first of all, it is money for the education of Indian children, the Bureau just holds it. We are not asking for money for nonfederal programs. These are all Federal activities, they are just housed in buildings built through nonfederal effort. We need to have these buildings kept up. Otherwise, the Congressional efforts to get more tribal and private giving for these buildings will be seen as a sham, and will cease.

An effort has been made in the bill to stop the Bureau from taking funds off the facilities accounts for non-school activities, and we thank the Committee for this. However, in the larger context, nothing has been done on education. We support the proposed bill for bonding and ask the Committee to encourage the Bureau to enter into inter-agency agreements to utilize their expertise and funds. However, these are ephemeral hopes. We know that if the Senate fakes no action helping us with construction in this reauthorization, the situation will only get worse, and we will be here gain, in the future, asking for assistance. Let us hope it does not take an accident such as in <u>All the President's Men</u> to obtain the relief to which Indian children are entitle.

OTHER ISSUES

There are several other issues in the second draft of the Senate Committee on Indian Affairs, relating to the reauthorization of P.L. 100-297, which we feel we must address.

First of all, we oppose any suggestion by the Bureau to amend the statute to require that only grants directly with Indian tribes be allowed. Currently the statute allows grants with a tribe or tribal organization (such as a community or a school board). It has been this way since its inception, and we think it has worked well. Tribes have the right of first refusal already in the statute, and any organization is required to get a tribal resolution of support before it can even file an application. All the Bureau's proposal would do is add another level to the process, and cause the tribe's to have to reconsider all existing applications.

Second, we are puzzled by a change between the first and second drafts. In the current law, two payments are made to deliver the program funds from the Bureau to the school. Grant schools receive a smaller first payment than Bureau school, and thus lose valuable control and interest. The first Senate draft remedied this situation, upping the amount of the first payment to all schools, Bureau operated and tribally controlled, to 85% of the amount to which they appear to be entitled under the Act. The second draft cut the amount for grants schools to 80%. Why? what have we done that we should be treated differently? We are aware of no problems either in the past or projected for the future. We ask that the Senate Committee language from the first draft be reinstituted, and the amount be put back to 85%.

Third, language was added in the second draft of the Committee language to apparently alter the application of the Federal Torts Claims Act. The section is very poorly drafted, and we are unsure of what is meant to be accomplished. We would like to have the language explained, and even than, we know of no reason the current language should be changed.

Finally, a small change, but our reaction to it may inform you as to how we feel about the Bureau. Language in the current section incorporating by reference certain section of the Self-Determination At was changed to omit the fact that these sections are to be administered with respect to grants schools as they are with respect to contract schools. IT may be only common sense, but we are afraid the Bureau will seize it as an excuse to interpret these sections differently for the two classes of schools, meaning that the results we thought would be obtained from incorporation would be different. We ask that the language be restored.

CONCLUSION

Again, thank you for letting me testify. The tribally controlled schools stand ready to do the best job possible wish the tools you give us. We count on your understanding and assistance.

Constrainment of Operation and Maintenance Funds
from FY 93 to FY 2000

	Need	Appropriated	Shortfall
FY 93	$ 410,000	$ 237,521	$ 172,479
FY 94	$ 415,000	$ 249,770	$ 165,230
FY 95	$ 415,000	$ 266,434	$ 148,566
FY 96	$ 420,000	$ 207,166	$ 212,834
FY 97	$ 425,000	$ 256,626	$ 168,374
FY 98	$ 431,236	$ 285,800	$ 145,436
FY 99	$ 426,000	$ 279,135	$ 146,865
FY 00	$ 421,057	$ 295,772	$ 125,285

TOTAL LOSS EFFECTING FACILITY $1,285,069

This facility has a $ 6,700,000 backlog.

< GRANT SCHOOLS >
AS OF DATE: 10/15/99
REPORT DATE: 12/13/99 07:52:54

O & M DISTRIBUTION FOR ABERDEEN
AREA BY AGENCY BY LOCATION

	GROSS SF	UTILITIES	CUSTODIAL	PREVENTIVE MAINTENANCE	UNSCHEDULED MAINTENANCE	EDUCATIONAL EFFICIENCY	ISOLATION	LOCATION PROG SUPP	NON-MAINT BLDGS	TOTAL
A09-05	77,817	80,781	126,751	56,220	42,838		5,160	109,307		$421,057

< GRANT SCHOOLS >
AS OF DATE: 10/15/99
REPORT DATE: 12/13/99 07:52:54
LOCATION: A09-05, ABERDEEN, SISSETON AGENCY, TIOSPA ZINA TRIBAL SCHOOL

O & M DISTRIBUTION FOR ABERDEEN
BY BUILDING WITHIN LOCATION

BLDG NO:	USE	GROSS SF	UTILITIES	CUSTODIAL	PREVENTIVE MAINTENANCE	UNSCHEDULED MAINTENANCE	EDUCATIONAL EFFICIENCY	BUILDING TOTAL
501	S2	1,330	1,462	2,258	570	659		$4,949
502	S2	1,330	1,462	2,258	570	659		$4,949
503GY	GY	25,040	22,121	30,702	10,930	10,738		$74,491
90000C	S5	30,300	35,575	53,559	26,593	21,422		$137,349
90000D	S2	8,845	9,385	18,646	13,900	4,923		$46,834
90000E	GF	1,333	1,755	3,840	1,293	723		$7,611
90000F	S5	1,152	1,686	2,157	690	791		$5,324
90000G	VS	1,352	702	92	503	662		$1,759
90000H	S5	3,610	1,686	2,649	400	740		$5,475
90000I	S6	5,725	4,947	10,590	771	1,523		$17,829
LOCATION SUBTOTAL		77,817	80,781	126,751	56,220	42,838		$306,590

COMPONENT DESCRIPTION

UTILITIES - ACTUAL 99 COSTS
CUSTODIAL & PREVENTIVE MAINTENANCE - BASED ON WEED GENERATED BY PHYSICAL INVENTORY OF ROOM USE, BLDG USE, MECHANICAL SYSTEMS, AND UTILITY SYSTEMS (INCLUDES ESC)
UNSCHEDULED MAINTENANCE - BASED ON BUILDING USE, SQ. FT., CONDITION AND LOCAL BIA WAGE RATES (INCLUDES ESC).
EDUCATION EFFICIENCY - A CORRECTIVE FUND AMOUNT BASED ON THE EDUCATION CLASSROOM USE UTILIZATION REQUIREMENTS.
ISOLATION - COSTS NEEDED TO COMPENSATE FOR DISTANCES TO THE NEAREST REPAIR CENTER.
PROGRAM ADMINISTRATION - 8% OF PROGRAM COST (PROGRAM COST = LOCATION SUBTOTAL + GSA VEHICLE RENTAL + COMMUNICATION + SITE + GUARD SERVICE + PEST CONTROL + REFUSE DISPOSAL + WORK SUPERVISION).
GSA RENTALS (VEHICLES) / COMMUNICATIONS / PEST CONTROL / GUARD SERVICES / REFUSE COLLECTION / AND DISPOSAL - ACTUAL 99 COSTS
SITE - SITE DATA IS BASICALLY GENERATED FROM THE INVENTORY, IN THE SAME MANNER AS CUSTODIAL, PREVENTIVE MAINTENANCE, AND UNSCHEDULED MAINTENANCE.
EXPENDABLE EQUIPMENT - 2% OF (CUSTODIAL + PM + SITE)
WORK SUPERVISION - FUNDING FOR SUPERVISION OF WORKERS IN CUSTODIAL, PM, AND UNSCHEDULED MAINTENANCE CATEGORIES, EXCLUDING INSPECTION TASKS.

NOTE 1 - ESC IS COMPUTED AT 23.54 FOR ALL LOCATIONS.
NOTE 2 - ACTUAL 99 COST DOCUMENTATION IS AVAILABLE TO INCC AT LOCATION/AGENCY/AREA UPON REQUEST.

PROGRAM SUPPORT

PROGRAM ADMINISTRATION	28,400
LEAVE	28,400
GSA VEHICLE RENTAL	1,600
COMMUNICATION	1,700
SITE	21,735
GUARD SERVICES	
PEST CONTROL	660
REFUSE COLLECT/DISPOSAL	3,000
EXPENDABLE EQUIPMENT	4,084
WORK SUPERVISION	19,718
LOCATION TOTAL	$421,057

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X-Form BIA 4124 August 6, 1993 UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF INDIAN AFFAIRS DATE 01/21/00 NO. 2000-0263

FUND DISTRIBUTION DOCUMENT

TO Education Line Officer

UNIT NO. A09E05

UNIT NAME Tiospa Zina Tribal School

COPIES: RECIPIENT (3); CODE OIE-11; AREA BUDGET

APPROPRIATION SYMBOL AND TITLE:14-0/1-2100 Operation of Indian Programs 00/01

FUND	PROGRAM CLASS FACILITIES MAINTENANCE 312	INCREASE
31002	PROGRAM 31200	$ 95,062

REMARKS: This distribution is made pursuant to the H.R. 3194, the FY 2000 Omnibus Appropriations Act, (P.L. 106-113, H.R. 3423, signed November 29, 1999) making appropriations for the Department of Interior and Related Agencies for BFY 2000-2001.

PURPOSE: Distribution BFY 2000-2001 facilities maintenance funds based on a 21 day Continuing Resolution. Note that operation funds will be issued separately..

GENERATED:
BIA Schools $ Grant Schools $100562 Total $

ISSUED PREVIOUSLY:
Recipient $5,500 Schools $5,500

Funds are to be obligated with program codes 31210 through 31270.

CONDITIONS: These funds are subject to the conditions and restrictions contained in 41 BIAM Supp. 4, issued August 6, 1993.

FUNDS AVAILABLE FOR OBLIGATION 10/01/1999 - 09/30/2001

PREVIOUS DISTRIBUTION	$ 5,500
THIS DISTRIBUTION	$ 95,062
TOTAL DISTRIBUTION	$ 100,562

APPROVED BY: _____ 01/24/00
DIRECTOR, OFFICE OF INDIAN EDUCATION PROGRAMS DATE APPROVED

RECEIVED BY: _____ ELO 2-1-00
RECIPIENT SIGNATURE & TITLE DATE RECEIVED

(The recipient is to return a signed copy to C:O., Office of Indian Education Programs, Code 511, to verify receipt of this Distribution Document.)

AREA/AGENCY ::::::: Aberdeen/Crow Creek/Lower Brule

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ED. LINE OFFICER ID:1-605-245-2399 FEB 04'00 11:42 No.003 P.04

X-Form BIA 4124 August 6, 1993 UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF INDIAN AFFAIRS DATE 01/19/00 NO. 2000-0262

FUND DISTRIBUTION DOCUMENT

TO Education Line Officer

UNIT NO. A09E05

UNIT NAME Tiospa Zina Tribal School

COPIES: RECIPIENT (3); CODE OIE-11; AREA BUDGET

APPROPRIATION SYMBOL AND TITLE:14-0/1-2100 Operation of Indian Programs 00/01

FUND	PROGRAM CLASS FACILITIES OPERATION 310	INCREASE
31002	PROGRAM 31000	$ 151,310

REMARKS: This distribution is made pursuant to the H.R. 3194, the FY 2000 Omnibus Appropriations Act, (P.L. 106-113, H.R. 3423, signed November 29, 1999) making appropriations for the Department of Interior and Related Agencies for BFY 2000-2001.

PURPOSE: This distribution transfers BFY 2000-2001 facilities operation funds from ELO to Schools..

GENERATED:
BIA Schools $ Grant Schools $195,210 Total $195,210

ISSUED PREVIOUSLY:
Recipient $43,900 Schools $43,900

CONDITIONS: These funds are subject to the conditions and restrictions contained in 41 BIAM Supp. 4, issued August 6, 1993.

FUNDS AVAILABLE FOR OBLIGATION 10/01/1999 - 09/30/2001

PREVIOUS DISTRIBUTION	$ 43,900
THIS DISTRIBUTION	$ 151,310
TOTAL DISTRIBUTION	$ 195,210

APPROVED BY : _____ 01/24/2000
DIRECTOR, OFFICE OF INDIAN EDUCATION PROGRAMS — DATE APPROVED

RECEIVED BY : _____ ELO 2-1-00
RECIPIENT SIGNATURE & TITLE — DATE RECEIVED

(The recipient is to return a signed copy to C.O., Office of Indian Education Programs, Code 511, to verify receipt of this Distribution Document.)

AREA/AGENCY : Aberdeen/Crow Creek/Lower Brule

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3f. RESIDENTIAL/HOMELIVING DEPARTMENT

The following narrative expresses the degree to which the RESIDENTIAL/HOMELIVING DEPARTMENT is committed to the success of the Therapeutic Residential Model. It would be well to comment on expected changes foreseen in the academic department and how you plan to use (TRM) to make the changes.

•

Testimony of Joyce Burr, Chief Administrator, Circle of Nations School
U.S. Indian Affairs Committee on Elementary and Secondary Education Act
April 25, 2000—Washington, D.C.

Honorable Senators, Representatives, and Committee Members,

My name is Joyce Burr. I am the superintendent of Circle of Nations School, an off-reservation boarding school operating under a contract from the BIA to the Sisseton-Wahpeton Sioux tribal governing body under PL 100-297. The 6-member school board represents states with the largest enrollment of students, from the states of North Dakota, South Dakota, Minnesota, Montana, Wisconsin, and Nebraska.

Circle of Nations is an off-reservation boarding school serving 200 at-risk youth grades 4-8, from over 30 tribal areas in 18 states. Circle of Nations is designated a national demonstration model *therapeutic residential school* under PL 103-384 Section 566. As such, we are very interested in today's forum regarding the re-authorization of the Elementary and Secondary Indian education law, and revising and improving the national standards for dormitory living.

Circle of Nations administration has on file the review forms certifying that Circle of Nations School Academic & Dormitory Report is in accordance with 25 CFR, Part 36 (National Dormitory Standards). I thank you for this opportunity to recommend the following additional considerations for a more therapeutic dormitory program.

- **Small group living**: along with other off-reservation boarding schools, Circle of Nations has the dilemma of trying to provide therapeutic programming in non-therapeutic living facilities—large group structures with long hallways and rows of bedrooms, a central bathroom, and too many behaviorally disturbed and potentially violent youth under a single roof. This type of living environment is only normal in a college or a military installation; military discipline is no longer the norm for Indian boarding schools. **All too often, the clinically sound therapeutic interventions that are recommended for our children and adolescents can not be consistently reinforced in the residential/homeliving environment. The physical setup and inadequate student-to-staff ratio make it difficult** for staff to interact therapeutically with small groups since the immediate safety and supervision of the entire group must take precedence. To counteract this hindering factor, Circle of Nations has structured the entire population's afterschool and evening activities in

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such as way as to avoid large crowds of unsupervised students, providing therapeutic activities and learning opportunities to small groups in different locations off-campus throughout the environment. But these groups mostly come together under one roof at night under the supervision of a limited number of dormitory staff. They can call for help from other staff such as Child Protection Officers, but the situation is inherently risky—these are emotionally and behaviorally challenged children, not college students and soldiers. **The recommendation is for small group living quarters, e.g. "cottages" such as are used in the Boys' Town environment.**

- **HVAC system**—the dormitories have inadequate air exchange and temperature regulation systems, leading to the increased risk of communicable or environmental diseases and pest infestation, e.g. insects and rodents. Students and staff are tempted to simply open the doors or windows for fresh air or cooling during the spring, fall, and winter; this is an opportunity for mosquitoes, mice, etc. to enter the facility and for pathogenic micro-organism or allergy agent buildup. A year-round dormitory program is totally out of the question without an adequate HVAC system. **Health and safety standards of care can not be met without adequate heating, ventilation, and air conditioning capability.**

- **Reduced student-to-staff ratio**—no matter how well staff are trained, there needs to be enough staff physically present too coordinate regular operations and effectively respond to crises and emergencies that are prevalent with the at-risk student population. **The ratio should be 1:15 or better.**

- **Participatory management of the residential program by a qualified mental/behavioral health clinician**—each school has a different need and approach to the problem. Circle of Nations School does not have a clinical psychologist or licensed behavioralist on staff, but this is a very clear need for the dormitory program—that a full-time licensed mental and behavioral health expert have at least part-time responsibility for the residential program planning, implementation, and evaluation methods, e.g. the residential component of each students' Individual Therapeutic Plan.

- **Basic health services**—a registered nurse, prepared at least at the baccalaureate level, is needed to oversee health service needs in the residential hours. **These are high-needs students; about half are psychiatric outpatients with psychotropic medication management and other care regimens to be followed in the afterschool, evening, and early-morning hours.** At-risk children are certainly at greater risk for injury than most children of the same ages. A registered nurse is needed as well during the academic hours. Circle of Nations School does not have an Indian Health Service clinic, nurse or licensed health professional on campus. There is a single LPN for the entire school, whose salary is paid by the school. **At a minimum, an off-reservation boarding school should have the services of an advanced practice nurse (nurse practitioner) for the entire school and one LPN per dormitory.**

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- **Extended learning programs**—all boarding schools should have staffing and capability to extend academic and individual therapies into the afterschool, evening, and weekend "residential" hours. Qualified certified recreation therapists, for example, would be responsible for carrying out the Recreation Therapy component of an Individual Therapeutic Plan. Most off-reservation boarding schools have recreation aides or similar positions to supervise diversional recreation activities, but these staff generally are not prepared to provide, document, and measure legitimate recreation therapy interventions. Another success strategy is for an extended learning curriculum, such as Circle of Nations School has implemented, which requires students to be in structured activities weekday evenings that comprise nine "classes" in four developmental needs categories: Arts & Culture; Health, Fitness, & Recreation; Social & Life Skills; and Science & Technology.

- **Vocational Education**—the homeliving hours are an excellent time to implement or reinforce formal Life Skills training such as Home Economics, Nutrition and Foodservice Education, Industrial Arts Shop, Agriculture/Horticulture, Animal Care, and other learning opportunities that differ in each community, for example, Circle of Nations School has a partnership with the county Vo-Tech and local high school to include students in Vo-Tech classes, and has had another partnership with NDSU Extension/Family Nutrition Program to provide Nutrition Skills Training in the evening hours, using the school foodservice facility for cooking and curriculum infusion, i.e. social skills and consumer math, science, culture, health, environment.

- **Technology**—computer literacy and technology skills need to be taught in real-life situations to promote real-life success. Technology capability should be part of the residential environment, e.g. computer study rooms and afterschool evening programming such as videography production on a theme relevant to schools. Technology is also needed to promote a Safe, Secure, & Disciplined School Environment, e.g. camera surveillance systems for the campus and dorms.

- **Cultural programming**—much of the afterschool and evening environment needs a cultural therapy component that reflects the integrity of the whole-school, whole-child therapeutic residential school mission. Circle of Nations School would like to have sweat lodge ceremonies for the students on a more regular basis, or more resource people available to reinforce traditional values and teachings on risk behaviors, or more cultural counselors with enough resources to work on Native American arts and crafts with the students during the evenings, or preparing for pow-wows and Dance Theatre productions. Cultural counselors can have a great positive effect on students in the dormitories where there is a lot of stress and anxiety that can be alleviated with cultural ceremonies and teaching interventions.

- Staffing and funding is needed to continue these activities **"linking clinicians, counselors, and mental health professionals with academic program personnel in a culturally sensitive residential program tailored to the particular needs of Indian students."** (PL 103-382 sec. 566, *Therapeutic Residential Schools*)

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Five years ago, Circle of Nations established a school reform standard that all residential Child Care Workers must have an Associate's degree in Mental Health Care or a related and relevant field in order to best serve the student population. This is a logical extension of the requirement that all teacher's aides must have a two-year degree or better. The afterschool and evening hours are of necessity an extended learning program for children in an off-reservation boarding school, who have a high need for consistent, structured, professionally supervised residential-hours programming.

A more therapeutic student-to-staff ratio with more adequately trained Child Care Workers is already proven to be effective in reducing the total major behavior incidence (infraction) annual rate by 56% of the 1995 baseline at Circle of Nations School. The rate should be reduced even further by the end of 1999-2000 school year.

The key to improving student retention rate is also to raise the standard of care in the residential sector. Circle of Nations School has demonstrated an increase of 30% in the annual retention rate since 1995. There were 15 graduating 8th graders at the end of 1994-95. The rate jumped each year until 1999 when there were 62 graduating 8th graders.

Child Care Workers with appropriate training understand they are a vital part of a child-centered helping team. They are trained to set safe limits for the child, to prevent or intervene in crisis situations, and to advocate for the student's needs, such as counseling and support services or health/medical services or behavior intervention.

Off-reservation boarding schools enroll those students who are at risk of school failure, dropout, expulsion, violence and substance abuse in their home agencies. Funding, resources, professional staffing, and quality education programming has historically been concentrated in the academic sector. Yet, all of this effort amounts to zero if the student is unable to cope in the residential environment.

Recognizing this problem, Circle of Nations School established academic program inroads to the residential environment such as:

- Behavioral Center—for students in need of acute or longer term 24/7 secured environment in order to complete schoolwork and work on issues such as violence, substance abuse, or other self-defeating behaviors. Behavioral Center uses a solution-oriented brief therapy approach, emphasizing personal responsibility, and a point-and-level behavior modification and management format.
- ELO (Evening Learning Opportunity)—was designed by the entire staff, every single employee, as a grassroots school reform activity in 1997. Facilitated by nationally known curriculum experts, the week-long workshop was held during Christmas vacation with input from the student body prior to their departure for vacation.
- MILE (My Independent Learning Environment) afterschool program—based in two former employee apartments, for students unable to adjust to a large group situation and needing a small-group, skills teaching format in a comfortable, homelike atmosphere. Expanded to MILE chemical dependency program in mobile home unit.

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Acting Residential Director is a licensed social worker and former Intensive Residential Guidance Counselor, and provides direct supervision to academic and residential counseling staff to promote a student-based integrated service environment. Changes foreseen as a result of TRM are briefly stated in terms of nine correlates:

(1) Comprehensive Mental Health Substance Abuse Services could be maximized in the residential hours by continuation of the licensed Chemical Dependency counseling and education program which is run in a structured sequence for ELO hours. Full-time CD Counselors are needed. A full time clinical mental health staff could be hired with duties to include residential program Quality Assurance.
(2) Comprehensive Student Screening/Assessment could be maximized by contracting with a psychiatrist who is willing to work on-site evenings and weekends for the annual back-to school assessment effort which is a very concentrated and cohesive effort already, involving a contracted clinical psychologist and clinical psychology interns with the entire academic and residential counseling and educational team.
(3) Intensive Staff Training will be boosted with weekly trainings and CPI practice, plus incentives for timely completed Therapeutic Residential training module system.
(4) Small Group Living in the two main residence halls could be programmed as an incentive for good citizenship, using the former staff apartment built onto each dorm
(5) Home, School, Community and Tribal Interaction could be promoted by the Student Dorm Council meeting and acting on issues related to quality of life in the dorm. They could act as an official liaison and schoolwide role models. Idea is to create a student-based holistic environment by integrating parent involvement into student discipline procedures. CNS could bring parents on campus, facilitating effective consequences and accountability by providing parents training to ensure continuity and consistency when the student returns home to their supervision.
(6) Safe and Secure Environment could be promoted by increasing staff-to-student ratio, recruiting from area colleges such as local NDSCS Mental Health Care program.
Cultural Relevance could be promoted by having a cultural liaison person in the dorms, who would also provide opportunities for students to explore culture in the home, school, and community.
(7) Year Round Program will include expanded summer Networking and Admissions team activities, and a summer hotline and Placement unit to help students through problems and find opportunities for physical/mental health promoting spiritual, cultural, social, and emotional development.
(8) Transition Period will allow for search and hire of a full-time Residential Director who has the requisite qualifications and commitment to the TRM. This might be a licensed behavioral specialist or someone with comparable experience and expertise who is dedicated to the TRM concept .

Residential Homeliving Supervisor Signature Date
(Becky Tripp)
Length of service in this position 1 years
Length of service at this school 5 years
Expected length of further service in this position 10 years

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NATIVE AMERICAN GRANT SCHOOL ASSOCIATION

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Marie Brady
Winslow Dorm

Mark Sorensen
Director

c/o Little Singer Community School
P. O. Box 310
Winslow, Az 86047
(520) 526-2950
FAX (520) 526-8984

TESTIMONY OF
THE NATIVE AMERICAN GRANTS SCHOOL ASSOCIATION
BEFORE
THE SENATE COMMITTEE ON INDIAN AFFAIRS
APRIL 26, 2000

Chairman Campbell, Distinguished Members of the Committee, ladies and gentlemen, staff;

My name is Dr. Mark Sorensen, and I am the Executive Director of the Native American Grant School Association. I am also the Director of a tribally controlled grant school, the Little Singer Community School in Arizona, located in the southwestern corner of the Navajo Reservation. Our federally funded school is a K-6 program. We also have recently begun a small junior high school program with charter school funds from the State of Arizona. I have personal experience with the issues about which I will be testifying.

The Native American Grant Schools Association (NAGSA) which I represent includes grant and charter schools on tribal lands of 5 of the largest tribes in Arizona and New Mexico. Most of our member schools are located on the Navajo Reservation, which encompasses land in the States of Arizona, New Mexico and Utah.

We have been working diligently on this legislation with our colleagues in the National Indian School Board Association (NISBA)

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and the Association of Community Tribal Schools (ACTS), as well as our two other school board associations representing schools on the Navajo Reservation. We have also worked with the Navajo Nation government, NAGSA is in full support of the points being raised by the two other multitribal organizations, the NISBA and the ACTS.

There are two issues that I would like to bring to your attention. The first relates to the relationship of the grants schools to the tribal government. The second relates to the creation of State Charter Schools in conjunction with BIA funded Grants Schools.

When looking at the relationship between the Tribe and the Grant Schools, sanctioned by that Tribe, there is often a difference of approach between smaller and larger Tribes. Among the smaller Tribes, Grant schools are often operated directly by the Tribe. However, the larger Tribes tend to provide more local autonomy through locally elected School Boards, even though those schools are still subject to Tribal law. On the Navajo Nation, for example, there are 33 Grant Schools, each of which has a locally elected School Board and each of which operates under its own Grant agreement.

There have been some who advocate including a requirement in the reauthorization of P.L. 95-561 or P.L. 100-297 that would require a single grant be given to each Tribe, with the Tribe disseminating those funds to individual Grant Schools. Let us be clear - this is not the position of the Navajo Nation Education Committee or the Navajo Nation President. The Native American Grant School Association is also opposed to this concept. We are aware of no tribe who supports this proposition.

We support funding for tribal Offices of Education to oversee Tribally Controlled Schools in much the same way that State Departments of Education oversee State

School Districts. With to our knowledge only two exceptions (Alaska and Hawaii), States have also opted for local control through locally elected School Boards with oversight provided by a State Department of Education.

Tribes should have this same option because tribes do have sovereignty over Schools on Tribal land. Having all grant funds flow through the tribe often creates more bureaucracy, inefficiency and rigidity. The direct funding option available to Grant schools under current law has worked very well, and we recommend that it be retained. Due to our concern about protecting Tribal sovereignty, we also recommend that Section 1128(b) (Local Financial Plans for Expenditure of Funds) be changed to maintain the current law and drop the provision (whose provenance and meaning we do not understand) that State laws should apply to Bureau of Indian Affairs schools. Federal and tribal, not State law, apply to these schools.

Tribes already have direct control of Tribally Controlled Grant Schools since every Grant School must be sanctioned by the Tribe, and the Tribe can withdraw that sanction at any time. Requiring a single grant for each Tribe would be contrary to the concepts of local control built into the Tribally Controlled Schools Act.

This past year, a controversy was created by the Bureau with regard to the joint operation of Federally funded Grant Schools and State funded Charter Schools. These joint programs have arisen because, as part of each year's appropriations for the Bureau of Indian Affairs, we have been stopped from meeting the desires of our communities. We have been prohibited grade level expansions of Grant Schools with Federal money, despite the fact that this means our children must then attend distant public schools, often with programs inappropriate to their needs.

.Reservation communities have turned to State funded Charter Schools to provide the unmet needs that their communities have demonstrated. This has gone smoothly for several years. However, last year the BIA took the position that the use of State funded Charter Schools in facilities built for BIA schools violated the Congressional prohibition on the expansion of Bureau funded schools. In fact. the BIA initiated procedures to take over three schools on the Navajo Nation because they had such joint programs.

In the opinion of the Native American Grant School Association, the development of such joint programs should be encouraged, rather than punished. There is no additional cost to the BIA for such programs, and they mean coordination of community and academic programs. The children stay close to home, and don't have to take long and dangerous bus rides. Teachers can do more tutoring. Everyone wins. . The basic academic programs of the Charter Schools are totally funded by the State. Again, the Grant School does not receive one cent more in BIA funding because they have a Charter School on their campus.

The BIA took the position, which was incorporated into the administrative provisions of the FY 2000 Interior Appropriations Bill at a midnight Conference session , that State funded Charter schools should *reimburse the Bureau of Indian Affairs for* the Charter Schools' share of the cost of these joint programs. This makes no sense. Grant Schools that also have Charter Schools on their campus do not receive one penny more from the BIA than they would if they did not have a Charter School. **There is no authority for the Bureau to receive what are essentially State payments. The school, which has incurred the expense, is out the money. Again, there is no additional cost to the BIA from such joint program.**

In fact, as a matter of law, each of these programs is required to pay their own expenses. Where there are joint programs or services, each school pays its own share. However, none of those monies should be paid to the BIA. The BIA is not incurring any additional expense. These monies should only be used for the educational services of the children.

We ask Congress to encourage such joint programs. We further ask Congress not to drain funding from these joint programs when funding is also being provided by the State and where there is no additional cost to the Federal government. We ask for inclusion of a sentence saying that expenses should be paid by the school incurring them, but that the money is to remain at the local level.

If there are any questions, I would be happy to respond.

THANK YOU.

NAVAJO AREA SCHOOL BOARD ASSOCIATION, INC.

N A S B A

P. O. BOX 3719
WINDOW ROCK (NAVAJO NATION), ARIZONA 86515
(520) 871-5225/5226 • FAX: (520) 871-5148

TESTIMONY OF THE
NAVAJO AREA SCHOOL BOARD ASSOCIATION (NASBA)
On the 2nd Senate version of the
Proposed Amendments to P.L. 95-561 and P.L. 100-297
As They Relate to BIA Funded Schools
April 26, 2000

Yaateeh, I am Angela Barney Nez, I am currently the Executive Director of the Navajo Area School Board Association (NASBA), the organization that was involved in the original development of P.L. 95-561 back in the mid 1970s. Most recently, NASBA has been actively involved in the development of a position concerning changes in P.L. 95-561 and P.L. 100-297 for the past two years. NASBA has participated with other entities on Navajo to develop a comprehensive position on these amendments. A position was developed prior to the bill being introduced in the House and an adjusted position was developed following the initial version from the Senate. The Navajo Nation has previously submitted these positions to the Congressional committees and NASBA supports these positions.

In our testimony today, we have three areas we wish to address: The role of school boards in the hiring of educators, educational standards, and the accountability issues.

1) **The role of school boards in the hiring of educators** (Section 1131 (f) - NASBA supports the current language of the statute which provides local BIA school boards with the decision making role at the local level, but subject to being appealed by the school supervisors (or principal) to the education line officer (school superintendent). The line officer can then overturn the school board for "good cause and in writing."

This language (the current law) is consistent with the role of a school board which has not elected to assume legal responsibility for the operation of its school under a grant or contract. When a school board elects to convert to a grant, it incorporates, it purchases liability insurance, and it has a considerable amount of additional funding to purchase legal advice, etc.

The proposed changes are unwise and unworkable. The new language would give ultimate authority to local boards that have elected to assume it. This is contrary to self-determination policy, which would not force any tribe or tribal organization into assuming responsibility they did not ask for.

2) **Educational Standards** (Section 1121) - The Navajo Nation has proposed language which would accomplish two important things. First, it would simplify the language so that people could understand it and, second, it would clarify and simplify the process by which a tribe could promulgate its own standards. We strongly urge the Committee to review the Navajo language and consider accepting it verbatim into the statute.

The proposed language makes few changes from the current law, which over the years has become difficult to comprehend and to some degree has been ignored. The new language would require the BIA to go through a lengthy standards development process even though standards already exist and have been on the books for about 20 years. Very few schools, if any, are currently accredited under the BIA and the BIA has never really developed an accreditation process. Therefore this requirement could well be a lot to do about nothing.

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The current language and the proposed language also show great deference to state standards and only permit a tribe to set standards if they are "comparable to the standards of the state or region in which the school is located." This section shows no confidence in the tribes ability to make critical decisions concerning education. It also presents a problem; i.e., Who decides if a given tribal standard is comparable to the state or regional standard?
Later sections provide waivers of the BIA standard so that the programs of a school will comply with state minimums and another provides a waiver and an opportunity for tribes to establish alternative standards to take "into account the specific needs of the tribe's children." These, however, are subject to rejection by the Secretary "for good cause." Decisions by the Secretary are not appealable. The proposed language is still confused and the ability of the tribe to establish its own standards is still uncertain. Section (f)(2) on page 9 then provides the local school board with the decision on which standards to follow, apparently without regard for any action of the tribe to set its own standards.

Again, the Navajo version, recognizing the difficulties involved with revising the current mess in the statute, rewrote and simplified the entire section. We believe it deserves another look.

3) Accountability - NASBA strongly supports the Navajo Nation position to require tribes that authorize grant or contract schools to develop systems and exercise oversight of their schools. This is consistent with tribal sovereignty and the inherent right of tribes to make key decisions related to the education of its children. The great majority of contract and grant schools do an admirable job of educating their students. For those that do not, there is no clear responsibility concerning whose responsibility it is to step in and do something. On Navajo, it has fallen on the Navajo Nation to step in to prevent the school from being reassumed by the BIA.

If tribes understand that they have a responsibility to ensure that their schools operate in compliance with applicable rules and laws, they will be more inclined to get involved before the school is "going down for the third time." If Congress requires tribes to be an active participant, it will be more apt to provide the long requested funding for tribal departments of education. If school boards know they do not have total authority to do whatever they want, they will be less inclined to take irresponsible actions. P.L. 100-297 has virtually eliminated any BIA role to get involved short of re-assumption due to gross mismanagement. The oversight role naturally transfers to the tribes and tribes should willingly accept it.

Tribes need some resources to go along with it. The ability to contract for oversight functions from BIA education line offices and to receive funding from the tribal departments of education line item are the obvious sources.

Earlier this school year, Senator Domenici from this and other influential committees sent a letter to Assistant Secretary Gover. He indicated that certain grant schools were misusing funds and demanded to know what the BIA was going to do about it. The BIA responded that its hands were tied due to the language of the law and recommended a change in the statute which would make tribes the only eligible grantees. NASBA does not support this change but recognizes the problem and has been actively searching for a workable solution. The language that follows is the Navajo Nation language which we **do** support:

Section 1121(h) - Indian tribes which operate Bureau funded schools, or which have authorized Indian organizations to operate Bureau funded schools shall, within eighteen months of the passage of this Act, develop and establish uniform fiscal and fund control standards and systems to ensure that the federal funds provided to the Indian tribes and tribal organizations are utilized in accord with applicable federal requirements, and for the education of the Indian students for which they are provided. Funds are authorized to be appropriated directly to Indian tribes for this purpose.

This testimony has dealt with only three provisions of the proposed statute and is incorporated in the Navajo Nation's position. We thank the Committee for the opportunity to testify. We will continue to work with the Committee's staff in our efforts to include more of the Navajo Nation's position into the final statute. Thank you very much.

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NATIONAL INDIAN EDUCATION ASSOCIATION
700 N. Fairfax St., Ste. 210 • Alexandria, VA 22314 • Phone: 703-838-2870 • Fax: 703-838-1620
E-mail: niea@mindspring.com • Web site: www.niea.org

STATEMENT OF THE
NATIONAL INDIAN EDUCATION ASSOCIATION
SUBMITTED TO
THE SENATE COMMITTEE ON INDIAN AFFAIRS
ON THE REAUTHORIZATION OF INDIAN SECTIONS
OF THE ELEMENTARY AND SECONDARY EDUCATION ACT

April 26, 2000

Submitted by:
John W. Cheek *(Muscogee Creek)*
Executive Director

The National Indian Education Association (NIEA), the oldest national organization representing the education concerns of over 3,000 American Indian, Alaska Native and Native Hawaiian educators, tribal leaders, school administrators, teachers, parents, and students is submitting this statement on legislation currently impacting Indian education. On behalf of our president, Dr. Gloria E. Sly and Board of Directors we thank you for the opportunity to present testimony today. We would also like to thank Chairman Campbell, Vice-Chairman Inouye and members of the committee for holding this important hearing.

Funding for Indian education and Department of Defense schools is the sole responsibility of the Federal Government while public education is a combination of state and federal resources. Local Education Agencies (LEAs) and their surrounding communities have the ability to pass bond initiatives in order to build or repair local school facilities. Tribal and Bureau of Indian Affairs (BIA) schools, on the other hand, must rely on the federal government to ensure their academic and construction needs are being met. The extent to which the federal government has assumed this responsibility can be exemplified in the backlog of construction and repair/renovation needs which exceeds $800 million. The area of school construction and repair remains problematic as recent annual appropriations have historically targeted less than ten percent of the total need requirement. The budget request this year, however, shows promise as it illustrates the possibilities when policy, programs, and funding work in tandem to correct long standing deficiencies in educating the Indian community.

In terms of academic success, American Indian students continue to rank at, or near, the bottom of every educational indicator. This seemingly negative situation is actually an improvement when you consider that just 50 years ago the federal government was actively involved in the termination of Indian tribes. While many BIA/Indian tribal schools have the option of

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developing their own assessment criteria, many opt to follow the guidelines of the state in which they are located.

Reauthorization of the Elementary and Secondary Education Act

The Elementary and Secondary Education Act (ESEA) of 1965 is due for reauthorization this session of Congress. NIEA has developed recommendations for consideration by the authorizing committee(s), the Department of Education and Indian Country. Several tribes, including the Affiliated Tribes of Northwest Indians and the National Congress of American Indians (NCAI) have endorsed NIEA's recommendations as they apply to the current ESEA, as amended by the Improving America's Schools Act (IASA). The issuance of Executive Order 13096 by President Clinton in August of 1998 on American Indian and Alaska Native Education and the reauthorization of the ESEA in 2000 will both play major roles in determining the future of education in general, and Indian education in particular.

To date, there have been five proposals introduced for the reauthorization of ESEA. These include: S.1180 and H.R.1960, the 'Educational Excellence for All Children Act of 1999' (Administration's proposals); H.R.2, the 'Student Results Act of 1999' (House-passed version, which includes Title I and other authorizations including Indian education); H.R.4141 'Education Opportunities To Protect and Invest In Our Nation's Students (Education OPTIONS) Act' which reauthorizes the remaining sections not covered under H.R.2; and S.2, the 'Educational Opportunities Act'. The only version which NIEA supports in relation to Indian education programs within the Department of Education, is S.2. S.2 maintains all authorizations under the Office of Indian Education while the other three legislative versions eliminate authorizations for Gifted and Talented, Adult Education, Indian Fellowships, and Tribal Education Departments. NIEA strongly opposes the elimination of these programs and further requests that these programs be funded at the levels we recommended before the Indian Affairs Committee on February 23, 2000. NIEA appreciates the committee's support of our position for keeping in these authorizations and for maintaining the integrity of Indian education programs within the current Title IX law.

While we support S.2, we are concerned about amendments to two laws that govern how Bureau of Indian Affairs (BIA) schools are administered. These include Public law 95-561 and Public Law 100-297 which authorize education programs for BIA, tribal grant and contract schools. Both of these laws are complex and NIEA has utilized the expertise of today's invited speakers to formulate our position on amendments to these laws. The following is a brief summary of these laws:

> Public Law 95-561: The Education Amendments of 1978, Public Law 95-561, as amended. Provides broad statutory guidance to schools that are operated or funded by the Bureau of Indian Affairs. Provides for Indian school boards in BIA operated schools. Requires the BIA to actively consult with tribes in all matters that relate to Bureau schools. Allows the Secretary of the Interior to implement cooperative agreements between tribes, school boards of Bureau schools, and state public school districts.

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Establishes formula-based funding for all BIA operated schools and BIA funded tribal schools. Requires that such schools be accredited or meet standards that are equal to or exceed those accreditation requirements. Allows tribes to set academic standards for BIA operated or funded schools that take into account the specific needs of Indian children.

Public Law 100-297: The Indian Education Act of 1988, Public Law 100-297, as amended. Allows tribes to operate BIA funded schools as grant schools rather than as contract schools. Grant school funding allows tribal schools to receive funding on a more timely basis, to invest those funds under certain restrictions, and to use the interest gained for further educational costs in their schools. This Act also authorizes federal funding for tribal early childhood programs and tribal departments of education. To date no money has been appropriated for tribal departments of education.

H.R.2 contains the house-passed version of these two laws, while their addition to S.2 is pending. NIEA has yet to take a formal position on the various versions of P.L.95-561 and P.L.100-297 because the entities instrumental in drafting changes to the bills have not come to an agreement on final bill language. As a national association, we would likely support the version that stands to benefit the most number of Indian students in the BIA education system.

H.R. 2 would revise the authorization of education programs provided through the BIA within the Department of the Interior and extend the authorizations for those that expired in 1999. The reauthorization of programs under H.R. 2 would provide for grants to state and local education agencies and tribal governments to assist target student populations to meet state performance standards. H.R. 2 would allow schools receiving funds both under Part A (under Title IX of the Improving America's Schools Act which authorizes programs under the Department of Education's Office of Indian Education) and through the BIA to consolidate such funds through an inter-agency transfer. Schools would be required to submit a plan demonstrating how programs funded by each agency would be integrated. The Department of the Interior would be the lead agency for contract schools and the Department of Education would oversee funding for BIA-operated schools.

The BIA currently operates 185 tribal schools as authorized under Title XI of the Education Amendments of 1978 (Public law 95-561). Several of these schools are home-living schools that serve students with exceptional needs. The Indian Self-Determination and Education Assistance Act (ISDEAA), P.L. 93-638, authorized the BIA to transfer school management authority to tribal agencies via contracts. The majority of BIA funding supports the Indian School Equalization Program (ISEP) grants to BIA-operated and contract schools as well as providing administrative cost grants to assist in the operation of contract schools. The ISEP formula considers the unique needs and grades served by each school to determine the proportion of available funds that each school receives. In addition, BIA supports an Early Childhood Development Program and the establishment of Tribal Departments of Education as authorized under Title XI. Authorization for these last two programs expired in 1999 and General Education Provisions Act (GEPA) extensions do not apply to programs under the Department of

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the Interior. All other BIA programs are permanently authorized under the Snyder Act of 1921 (Public Law 65-95).

The following are general comments we have regarding certain sections of the proposed amendments to P.L.95-561. This is not a complete listing and should be considered with comments from the other presenters.

- Indirect Cost Issue - In March, NIEA held its third annual Indian education Impact Week, here in Washington, DC. During a presentation by Assistant Secretary Indian Affairs, Kevin Gover, several people asked about a situation at their school(s) where Facilities Operations and Maintenance (O&M) funds were being reduced by 3 to 16%. Assistant Secretary Gover was unaware of the disparities in the amounts withheld and seemed to be unclear as to why there even needed to be a reduction, and if there was a need, why it was over 4%. Without knowing the full details of this issue, NIEA would recommend that if any reduction needs to be made that it be at the lowest level possible and administered equitably.

- Negotiated Rule Making - NIEA understands that Sec. 1137 provides for negotiated rulemaking with the BIA developing the initial proposed regulations. NIEA recommends that to the extent possible, the process of negotiated rulemaking be fairly conducted and that representatives from the associations represented here today and tribal representatives be included in the process. The process of "negotiations" indicates that two differing entities or opinions sit at the same table to work our differences. By having the draft regulations developed "in house" before being reviewed by stakeholders, an uneven playing field is established from the outset. Public Law 93-638 regulations were developed with a similar process involving tribes and federal officials and met with some success. We recommend a similar approach.

- Forward Funding - The current law provides a mechanism for forward funding of certain BIA education functions such as the Indian School Equalization Formula and transportation. The idea of moving all school related functions into a forward funded cycle would require a double appropriation to start the process for such areas as Facilities O&M. If the appropriation committees could be convinced such a tactic would relieve some of the funding issues with O&M dollars, NIEA would support the effort. Given that fact that we are in third year of increasing budget surpluses, now would be the perfect time to ask for the increased funding.

P.L. 100-297:

- First Grant Payment - Under P.L.100-297, the House version (H.R.2) recommends that the first grant payment be made on July 15 and that the amount be 85% of the school's prior year allocation. The current Indian Affairs Committee draft recommends 80%. NIEA recommends that the percentage to be paid on the required July 15 date be 85%. Part of the issue may be due to the possible decrease in the number of students in the

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current year as compared with the previous year. In any case, we recommend that any overage to the school, simply be reimbursed as referred to further on in section 5208.

Tribal Education Departments

NIEA fully supports Tribal Departments of Education (TED), both within the Department of Education Indian education authorization and within the BIA education structure. Two separate provisions authorize tribal education department funding. The Improving America's Schools Act of 1994, Public Law 103-382 (20 U.S.C. § 7835), establishes authority for the Department of Education to fund tribal education departments. No appropriations have ever been made under this provision, which the Administration now proposes to eliminate. The School Improvement Amendments of 1988, Public Law 100-297 (codified at 25 U.S.C. § 2024), establish authority for the BIA to fund tribal education departments. No appropriations have ever been made under this provision, either.

This is a serious failure on the part of the federal government. At present, about one in six tribes (almost one hundred of the over 550 tribes) has an education department. These departments serve hundreds of thousands of tribal students. They administer scholarships, supervise programs, and develop curricula and teacher training programs. They provide leadership and advocacy for schools, educators, and parents. They foster working cooperative agreements among tribal, federal, and state agencies, schools, and programs. Most importantly, tribal education departments are successfully addressing core problems in Indian education such as disproportionately high absenteeism and low educational attainment levels. The Carnegie Corporation of New York recently funded the first external evaluation of a tribal education department. The evaluation found that in the last ten years the drop out rates for tribal secondary students on the Rosebud Sioux Indian Reservation in South Dakota have decreased by thirty per cent, and graduation rates have increased by fifty percent. The evaluation credits the Truancy Intervention Program administered by the Rosebud Sioux Tribal Education Department with this substantial progress. This progress is unprecedented; we know of no federal or state program that shows comparable results. The P.L.100-297 legislation also allows tribal education departments to be treated as local education agencies for the purpose of applying for bilingual education grants.

Indian education occurs in a complex environment of services provided by tribal, federal, and state governments. The tribal education departments are rapidly rising to the challenge of being in the best overall position to track and report on tribal students, to identify and coordinate resources, and to provide technical assistance and accountability. In short, tribal education departments are effectuating the many good recommendations about how to improve Indian education that have been made over the years but never implemented.

Administrative Cost Grants.

We have been made aware of possible amendments to H.R.4148, 'Tribal Contract Support Cost Technical Amendments of 2000' sponsored by Representatives Don Young and J.D. Hayworth. The bill is intended to make contract support costs for Indian Self-Determination Act contracts

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and compacts a Federal entitlement. The amendments that are being proposed for H.R.4148 would make Administrative Cost Grants within the BIA education system a Federal entitlement as well. The purpose of Administrative Cost Grants is to pay the administrative and indirect costs incurred by tribally-operated schools without reducing direct program services, and to enable them to carry out the necessary support functions that would otherwise be provided by the BIA from resources other than direct program funds.

The Administrative Cost grant mechanism was created by Congress in 1988 to more precisely identify the amount of funding needed for indirect and administrative costs of tribes and tribal organizations who operate BIA-funded elementary and secondary schools for Indian children. Prior to the 1988 law, tribally-operated school programs received indirect costs through traditional Indian Self-Determination and Education Assistance Act (ISDEAA) method for supplying "contract support" funds to tribes either through a negotiated indirect cost rate or a negotiated lump sum payment.

Congress changed the system in 1988 by adding the Administrative Cost (AC) Grant provision to the basic education law. The amount of each tribally-operated schools AC Grant is calculated under a formula set out in the law, but funding for AC Grants is subject to appropriation. The addition of AC Grants within H.R.4148 would allow entitlement payments for the purpose of paying administrative costs associated with delivery of education services for Indian children. By not having this function dependent upon annual appropriations, instructional dollars would not be sacrificed when insufficient administrative costs are available. NIEA believes that education for American Indian and Alaska Native people is a federal responsibility and that any proposal that makes any portion of Indian education services an entitlement should be supported. We are not aware of any companion bill in the Senate and would encourage this committee's support in facilitating this proposal.

In closing, the National Indian Education Association would like to commend the committee and staff for taking on such an enormous task this session by working with Indian organizations, tribes and communities in reauthorizing the various pieces of legislation affecting the education of Indian people. We also acknowledge the expertise of the organizations assembled here today and ask that the committee and the BIA work with these associations in the completion of final legislative language. Where applicable, we encourage a cooperative working arrangement between the various stakeholders in finalizing and eventual implementation of new authorizing language for BIA, grant and contract schools including the development of appropriate regulations. NIEA would be willing to recommend members of our association to assist in this effort as well. Thank you for the opportunity to present today.

MISSISSIPPI BAND OF CHOCTAW INDIANS
OFFICE OF THE TRIBAL CHIEF

TRIBAL OFFICE BUILDING
POST OFFICE BOX 6010
PHILADELPHIA, MISSISSIPPI 39350
TELEPHONE (601) 656-5251
FAX (601) 656-7333

May 4, 2000

Honorable Ben Nighthorse Cambell
Chairman, Committee on Indian Affairs
380 Russel Senate Office Building
Washington, D.C. 20510

Dear Senator Campbell:

The Mississippi Band of Choctaw Indians hereby submits a statement for the Committee's April 26, 2000 hearing on proposed revisions to two BIA education statutes—P.L. 95-561 (Title XI of the Education Amendments of 1978), and P.L. 100-297 (Tribally Controlled Schools Act), and asks that this statement be included in the hearing record.

The Mississippi Band of Choctaw Indians centrally operates eight BIA-funded schools on our reservation in east-central Mississippi through a single Tribally Controlled Schools Act Grant issued to the Tribe. Over 1800 Choctaw students in grades K-12 are enrolled in the Choctaw schools. The tribal schools -- including the elementary, secondary and other tribal education programs -- are centrally administered by the Choctaw Department of Education, Division of Schools, in accordance with budgets and policies established under the governing authority of the Tribal Council.

School Board Training. [REFERENCE: SEC. 1126 (C) (2) (B) OF 4/14/00 DRAFT REVISION OF P. L. 95-561, PAGE 49, LINES 6-16]

This provision calls for each new school board member of a "local school board" to receive 40 hours of training within the first 12 months of assuming a position on the school board. It is not clear whether this training requirement is intended to apply to new school board members of tribally-operated schools as well as to new members of Bureau-operated schools. If the provision is intended to apply to new board members of tribally-operated schools (and if the language is revised to clarify this), we request an amendment to exempt from the training requirement the members of a tribal governing body where the tribal governing body acts in the capacity of a school board.

Because the Mississippi Band of Choctaw Indians centrally operates its schools under one Grant, the Tribal Council acts as the school governing body. On some other reservations, by contrast, tribes have authorized one or more local community school boards to contract or grant directly with BIA for school operations and that board is the school's governing body.

The Tribal Council, of course, is the governing body of the Tribe and has far more duties than school operations that demand the time and attention of its members. It would be a hardship to require newly-elected Tribal Council members to attend training courses on school operations matters, particularly if time away to attend training would interfere with their other governmental responsibilities. We are aware of no other federal law, which requires the elected members of tribal governing bodies to receive training on specific matters, or imposes such a requirement on the member of State Legislatures, a state's counterpart to a Tribal Council.

We request that the following sentence be added at the end of Sec. 1126 (c) (2) (B):

"This training requirement shall not apply to a tribal governing body that serves in the capacity of a school board."

Use of Grant Interest Income. [REFERENCE: SEC. 5208 (b) (1) OF 4/17/00 DRAFT REVISION OF P. L. 100-297 (TRIBALLY CONTROLLED SCHOOLS ACT), PAGE 38, LINES 20-23]

Sec. 5208 (b) allows a Grant recipient to earn interest on Grant funds, without offset, after the funds are paid to the recipient but before they are expended for school operations. The current law wisely places no restrictions on the Grantee's use of such interest income. The Mississippi Band of Choctaw Indians endorses the current law's silence on this issue, as it accurately reflects a primary intent of the Tribally Controlled Schools Act—true local control with the least possible Federal interference.

The Committee's April 17, 2000 draft would place a significant limitation on a Grantee's use of interest earnings through the following sentence: "Such interest or income shall be spent for activities for which the funds from which such interest or income was derived were to be expended." The Mississippi Band of Choctaw Indians objects to this sentence for practical and policy reasons:

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- The full meaning of the provision is unclear and would lead to varying interpretations. One possible interpretation is that the Grantee would have to individually calculate the amount of interest earned on each activity for which funds are supplied through the Grant—such as basic instruction; student transportation; facilities operation and maintenance; Special Education; Family and Child education (FACE); administrative costs; etc., and restrict the use of the interest earned to the activity category which produced it. This would create an undue record-keeping burden.

- A keystone feature of the Grant law would be destroyed: the express permission for the Grantee to deposit its Grant funds in a general operating fund from which it then defrays the costs incurred in operating its school(s). If the provision is interpreted in the manner describe above, the simplified general operating fund authority for Grantees would have to be replaced with an activity-based accounting system so that interest could be calculated on a daily basis. The added administrative and auditing expenses that would be incurred to comply with such a requirement would far outweigh any benefit derived.

- The Indian Self-Determination Act, on which the Tribally Controlled School Act is modeled, does not place any limitations on the uses of interest earned by tribes on advance payments made under an ISDA contract. It is unnecessary and unfair to impose such a limitation on one category of tribal entities—Grant schools—that have elected to exercise their self-determination rights through the Tribally Controlled Schools Act.

- Tribes and tribal organizations should have the flexibility to determine at the local level how interest income should be expended without a statutory limitation such as this which practically invites BIA micro-management, one of the circumstances the Grant law was enacted to eliminate.

The Mississippi Band of Choctaw Indians has operated a wide variety of BIA-funded and IHS-funded programs on its reservation for decades. We expend the funds provided, and the interest earned on those funds, prudently and responsibly. We strongly object to the introduction of unnecessary and potentially costly limitations on the use of interest earned on one program—School Operations.

We urge the Committee to drop this sentence from Sec. 5208 (b) of its draft revisions to P. L. 100-297.

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Administrative Cost Grants -- Entitlement. The Mississippi Band of Choctaw Indians urges the Committee to amend Sec. 1127 of the draft bill (Sec. 1128 of current law; 25 USC §2008) to make funding for Administrative Cost Grants a federal entitlement. Administrative Cost Grants are schools' only source of funds for indirect/administrative costs, and appropriations for these Grants chronically fall short of the amount needed to fully fund the Administrative Cost Grant formula required by the law. In the current school year (SY99-00), BIA is able to supply only 82% of need.

The chronic under funding forces schools to use scarce program dollars to make up the shortfall, further eroding the Tribe's ability to provide a quality education to Indian students. We ask the Committee to adopt for tribally operated schools the approach of Reps. Young and Hayworth in H.R. 4148. This bill would give entitlement status to the "contract support costs" of tribes and tribal organizations that contract IHS and BIA programs under the Indian Self-Determination Act. Unfortunately, this bill does not now cover the tribally operated schools, as their indirect and administrative costs are paid through the Administrative Cost Grant provision of the BIA education law, not through the ISDA.

The pending amendments to ESEA gives this Committee the perfect opportunity to cure a significant problem faced annually by the tribally operated schools in the BIA system at very little cost to the federal budget. We project that the budget impact of this proposal would be less than $12 million.

Proposed New Method for Distribution of Education Facilities Improvement and Repair Funds and/or New School Construction Funds. We have been advised that the Association of Community Tribal Schools (ACTS) has proposed for Committee consideration a new method for distribution of education Facilities Improvement and Repair (FI&R) funds and/or New School Construction Funds that would result in each school receiving an annual allocation of funds for these purposes.

The Mississippi Band of Choctaw Indians tentatively supports such an idea for FI&R funds, but we do not agree that a per school allocation of funds for new school construction is either feasible or desirable. While ACTS proposed a distribution formula based on size of student enrollment, we understand that the

Committee staff prefers a needs-based formula approach, and that language for this idea is being developed.

The Mississippi Band of Choctaw Indians endorses the idea of supplying recurring funding to schools so they can plan their own FI&R projects at the local level. Several of our schools now have important repair projects registered on the "backlog" but we are unable to plan on when the projects will be funded. In addition, recurring funding would enable us to make repairs sooner, and thereby abate the growth of the un-funded backlog.

We urge the Committee and its staff to pursue this idea of providing an annual FI&R funding allowance to schools. However, we are very concerned about the potential to develop a formula that does not meet the needs of schools such as ours that are uniquely organized and administered. Therefore, we ask the Committee to supply us with a copy of any draft language under consideration so that we may have opportunity to comment on it.

The Mississippi Band of Choctaw Indians respectfully requests your consideration of these views on the pending legislation.

Sincerely,

Phillip Martin

Phillip Martin
Tribal Chief

Cc: Honorable Daniel Inouye
Vice Chairman, Committee on Indian Affairs
722 Hart Building
Washington, D.C. 20510-1102

NAVAJO NATION WRITTEN TESTIMONY
SENATE COMMITTEE ON INDIAN AFFAIRS
Wednesday, April 26, 2000
HEARING ON EDUCATION LEGISLATION
Relative to Section 1120 - 1141 (P.L. 95-561)

PART B - BUREAU OF INDIAN AFFAIRS PROGRAMS

The Navajo Nation has provided the staff of the Senate Committee on Indian Affairs with detailed recommendations relative to the language for amendments to the portions of the Elementary and Secondary Education Act which derive from Public Law 95-561. While the Navajo Nation maintains its recommendations, in their entirety, the following areas are of particular concern to the Navajo Nation. The Navajo Nation urges the change of the draft legislation to incorporate these changes, or to maintain certain provisions which have been included in the second draft of the legislation. The Navajo Nation would be pleased to provide any assistance to the Committee or its staff which would be helpful in addressing these issues and incorporating the additional necessary language. All references set forth herein are to the second draft of the legislation, as follows:

Section 1121(f)(4), Page 10, Lines 4 - 11 - In the area of fiscal control and fund accounting standards addressed in the draft legislation, Section 1121(f)(4), the Navajo Nation is addressing the perceived deficiencies in such matters within contract and grant schools, which is the apparent impetus for Section 1121(f)(4). However, the proposal of having the Bureau of Indian Affairs establish as "consistent system of reporting standards for fiscal control and fund accounting for all contract and grant schools" is not one which provides the Congress or Navajo children with any assurances of fiscal accountability. One only needs to look to the Department of Interior's well-publicized and judicially noted failings in the area of Indian land trust funds to see this fact. The entirety of Section 1121(f)(4) should be stricken from the draft legislation.

The Navajo Nation has recommended that the following language be substituted to provide a more balanced approach which is consistent with Navajo Nation practice and sovereignty, the principles of Indian self-determination and tribal control of contract and grant schools:

(h) Indian tribes which operate Bureau funded schools, or which have authorized Indian organizations to operate Bureau funded schools shall, within eighteen months of the passage of this Act, develop and establish uniform fiscal and fund control standards and systems to ensure that the federal funds provided to the Indian tribes and Indian organizations are utilized in accord with applicable federal requirements, and for the education of the Indian students for which the are provided. Funds are authorized to be appropriated directly to Indian tribes for this purpose.

This language would address the current perception that some grant and contract schools are not operating with appropriate fiscal and funds controls, while maintaining tribal sovereignty in the governance of such schools.

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Section 1121(i), Pages 15 - 20 - In the matter of application for contracts or grants for non-bureau funded schools or expansion of bureau funded schools, addressed in the draft legislation, Section 1121(i), the Navajo Nation supports the addition specific language to address the pressing matter of grade level expansions. Currently, there is no practical method for the Navajo Nation to address this need to deal with changing demographics of Navajo children within the school attendance boundaries.

The Navajo Nation recommends the addition of the following language to the provisions of the draft legislation, Section 1121(i)(1) as a new subsection (D) stating:

D) Grade Level Expansions
Approval of applications for grade level expansions of Bureau funded schools which would increase the amount of funds received by the Indian tribe or school board under section 1126 of this Part, shall be considered separately from applications for new schools.

In determining whether to approve an application for school expansion, the Secretary shall consider the following factors relating to the program that is the subject of an application under this provision:
(a) The expansion request is for no more than one grade level in any given school year.
(b) The adequacy of existing facilities to support the program(s) proposed or the applicant's ability to obtain or provide adequate Facilities.
(c) The consistency of the proposed program(s) with tribal education codes or tribal legislation on education.
(d) The history and success of the applicant's services to the population already served, as determined from all applicable factors.

This language would be inserted into the draft legislation at **Section 1121(i)(1), Page 17, Line 21**.

Section 1124(f), Page 37, Line 14 - The Navajo Nation wants to ensure that funds received by Bureau funded schools for construction or school replacement projects remain available until expended for that purpose. Accordingly, the Navajo Nation recommended the addition of language to this section, which would be an addition to the existing language in the draft legislation, **Section 1124(f), Page 37, Line 14**, as follows:

Funds allotted to any construction or school replacement project under these priority systems shall not be withdrawn unless the project has been completed and accepted, and they exceed the costs of the project.

Section 1124, Page 35, Lines 18-25 - The Navajo Nation is concerned with the lapse of school operations funding which would be lost in the event of a temporary closure of a school facility on the basis of hazardous conditions. The Navajo Nation's supports the use of such funds for abatement of the hazardous conditions, as currently set forth in the second draft of the Senate Committee's bill.

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Section 1125(c), Page 38 - 39, Lines 19 - 25, 1 - 7 - The Navajo Nation is interested in clarifying the contractibility of educational line officer functions. The Navajo Nation has recommended language relative to this matter which would be included within the draft legislation, as a new Section 1125(c) starting at Page38, Line 19, as follows:

Education Line Officers - Subject to the provisions of subsection (g) of this section, several of the functions of the education line offices are contractible under P.L 93-638. Plans to contract such functions must include provisions to serve, with no diminishment in services those schools which have not elected to convert their schools to grant or contract status and those grant or contract schools that wish their respective line offices to continue to provide specified services to them.

The functions of the education line offices are contractible to tribes or tribal organizations that are assuming administrative oversight, technical assistance or other regulatory functions over the schools involved. This may include the function of receiving and acting upon appeals from local BIA school supervisors of school board decisions on the local financial plans and personnel actions; et al. Tribes may also elect to authorize grant or contract schools to contract functions other than administrative or regulatory oversight.

Those functions of the line offices which are determined to be inherently federal are not contractible. In cases where there is a dispute concerning the functions or the funding available for contracting, the matter will be decided according to the dispute provisions of P.L 93-638.

The addition of this new subsection will require the renumbering of subsequent subsections within 1126.

Section 1125(g), Page 43, Line 11 - The Navajo Nation supports the reorganization of the Bureau education function, under the following proposed statutory provisions. These provisions should be added as a new subsection in the draft legislation, Section 1125(g), beginning on Page 43, Line 11, as follows:

(g) Reorganization of the Bureau of Indian Affairs Education function

(1) Notwithstanding any other provision of law, not later than 120 days after the enactment of this provision, the Secretary shall enter into negotiations with representatives of tribes being served by schools funded by the Bureau (such representatives to be chosen on a representative basis proportionate to the number of tribal members served be Bureau funded schools and by the tribes affected for the reorganization of the Central Office of the Bureau for all functions, including functions of the Bureau's Facility Management and Construction Center, as they relate to education, wherever situated administratively. The Secretary shall see there is equitable representation from each area served by the Bureau school system. No later than 270 days after the date of enactment of this provision, the Secretary shall complete such negotiations and publish a plan in the Federal

Register for the reorganization of the Central Office, such plan to be decided by the majority vote of the tribal and GOALS representatives participating.

(2) The Plan required under subparagraph (1) shall include consideration of the reorganization of the administrative structure of the Central Office and the Education functions of the Bureau s Facility Management and Construction Center the need for each function performed by the Central Office, the need for the retention of each function or aspect thereof, the staffing/personnel needs for the Central Office and such other issues as shall be identified by the tribal and school representatives participating.

(C) The Secretary shall identify the amount of funding needed pursuant to the needs for funding for the Central Office before and after the plan developed under this provision for each area having tribes with schools funded by the Bureau.

(2)(A) Any other provision of law notwithstanding, beginning with a period 60 days after the completion of the activities encompassed under paragraph (I) of this subsection at the request of any tribe, the Secretary shall enter into negotiations under this paragraph to prepare a plan to reorganize the functions relating to education of each Education Line office so requested, provided that in an Education Line Office where there is located more than one tribe or school funded by the Bureau, the Secretary shall poll the other tribes or schools not making the initial request and shall enter into such negotiations upon a finding that a majority of tribes or schools served support such negotiations. Such negotiations shall cease at any time the Secretary is notified by a majority of tribes or schools affected they no longer support the negotiations.

(B) If a majority of representatives of tribes and schools determine there should be changes in the administrative structure of the education functions of an Education Line office, the Secretary shall negotiate with those entities on the makeup of the administrative structure for education functions at the Education Line Office level, no matter what administrative unit in which such functions are included. Such changes may provide for the reorganization of the administrative structure, the allocation of personnel (including determinations of office size and functions), the delegations of authorities to tribes or schools and the transfer of functions to tribes and schools and such other changes as may be recommended by the tribal or school representatives including in the case of a tribe served be more than one Education Line Office, the option to combine such Line Offices. One specific part of the plan shall deal with the functions to be retained by the Education Line office, particularly as they relate to services which are needed to be provided to small schools and tribes. In the construction of the plan for the reorganization, the Secretary shall make special provision for the waiver of any regulation needed to increase the authorities or functions which may be transferred to the tribes or schools.

(4)(A) Nothing in this provision shall be interpreted to allow the Secretary to transfer any of these funds into the Tribal Priority Allocation system. These funds shall be reserved by the tribes

for the support of education.

(B) Nothing in this provision shall be interpreted as requiring, nor shall the Secretary or employees of the Bureau require or encourage tribes or schools to undertake reorganization efforts. Such efforts shall be at such time as the tribes and the schools determine, and shall be totally under the discretion of those entities.

Section 1126(c)(2)(B), Page 49, Lines 6 - 16 - The Navajo Nation is concerned about the provision of training for school board members, as well as the provision of funding for such training activities. In this regards, the Navajo Nation recommends the substitution of the following language for that currently set forth in the draft legislation:

Training - The Secretary shall reserve for school board training an amount equal to .02 percent of the funds appropriated for each fiscal year for distribution under this section. Such funds shall be allocated equally among all BIA-funded local school boards and be available for their use for school board training activities. At the election of a tribe or group of tribes, a contract may be authorized under Public Law 93-638, as amended, for the provision of school board training. In such cases, the training funds of each school shall be set aside for such contract at the Central Office level and distributed to the tribe or tribal organization which has been authorized to provide such services. Each tribe, school board, or school board organization providing school board training shall see that each new school board member receives, within a 12 month period of assuming a school board position, 40 hours of training relevant to that individual's service on the school board. Such training may include legal issues pertaining to Bureau funded schools, ethics, and other topics deemed appropriate by the tribe, school board, or school board organization providing such training.

Section 1127(B)(ii), Page 59, Lines 1 - 11 - The Navajo Nation is concerned that the contracting or granting of two or more educational programs by the Navajo Nation itself would result in a decrease of administrative costs from that which would be obtained through the granting of two or more educational programs by separate entities. This result decreases the interest of the Navajo Nation in undertaking direct contracting or granting of educational programs. In order to address this concern, the Navajo Nation supports the language set forth at the above location.

Section 1129(f), Page 74 - 75, Lines 18 - 25, 1 -16 - The Navajo Nation is concerned that the current language relative to cooperative agreements would not provide adequate flexibility to the tribes in implementation of such agreements. Accordingly, the Navajo Nation supports the language set forth at the above location.

Section 1131(a)(1)(B), Page 80, Lines 6 - 9 - The Navajo Nation is concerned that Central Office employees are not provided the same opportunities to improve their performance as is granted to all other BIA OIEP employees. Accordingly, the Navajo Nation recommends the substitution of the following language for that currently set forth at this subsection:

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(B) are performed at the Central or agency level of the Bureau and involve the implementation of education-related programs, other than the positions of the Director OIEP, Deputy Director OIEP, and Personnel Director OIEP.

Section 1131(f) and (g), Pages 84 - 90 - The Navajo Nation is concerned about the manner in which the provisions for hiring and retention of educational employees are addressed within the draft legislation. Accordingly, the Navajo Nation recommends the substitution of the following language for that currently set forth in the draft legislation:

(f) Hiring of educators

(1) In regulations governing the appointment of educators, the Secretary shall require-

(A)(I) that educators employed in a Bureau school (other than the supervisor of the school) shall be hired by the supervisor of the school;

(ii) each school supervisor shall be hired by the appropriate education line officer;

(iii) educators employed in a education line office of the Office of Indian Education Programs (other than the education line officer) shall be hired by the appropriate education line officer; and

(iv) each education line officer and educators employed in the Office of the Director of Indian Education Programs shall be hired by the Director.

(B) that before an individual is employed in an education position in a school by the supervisor of a school (or, with respect to the position of supervisor, by the appropriate education line officer), the local school board for the school shall be consulted and that subject to paragraph (2) a determination by the school board that such individual should or should not be employed shall be followed by the supervisor (or with respect to the supervisor, by the appropriate education line officer).

(C) that before an individual may be employed in an education position at education line officer level (or with respect to the position of supervisor of the appropriate education line office by the Director) their appropriate agency school board (serving schools in the education line office) shall be consulted, and that, subject to paragraph (3). A determination by such school board that such individual should or should not be employed shall be followed.

(2) The supervisor of a school may appeal to the appropriate agency education line officer any determination by the local school board for the school that an individual be employed, or not be employed, in an education position in the school (other than that of supervisor) by filing a written statement describing the determination and the reasons the supervisor believes such determination

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should be overturned. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the education line officer may, for good cause, overturn the determination of the local school board. The education line officer shall transmit the determination of such appeal in the form of a written opinion to such board and to such supervisor identifying the reasons for overturning such determination.

(3)(A) The education line officer may appeal to the Director of the Office any determination by the local school board that an individual be employed, or not be employed, as the supervisor of a school by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the Director may, for good cause, overturn the determination of the local school board. The Director shall transmit the determination of such appeal in the form of a written opinion to such board and to such education line officer identifying the reasons for overturning such determination.

(B) The education line officer may appeal to the Director of the Office any determination by the agency school board that an individual be employed, or not be employed, in an education position in such agency office by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the agency school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the Director may, for good cause, overturn the determination of the agency school board. The Director shall transmit the determination of such appeal in the form of a written opinion to such board and to such education line officer identifying the reasons for overturning such determination.

(g) Conditions of employment of educators.

(1) Regarding the employment of educators, the Secretary shall see -

(A) that procedures be established for the rapid and equitable resolution of grievances of educators;

(B) that no educator during the term of their contract may be discharged without notice of the reasons thereof and without being given an opportunity for a hearing under procedures that comport to the requirements of due process; and

(C) educators be notified at least 30 days prior to the end of their contract whether their employment contract will be renewed for the following year.

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(2) The supervisor of a contract educator may discharge for cause any educator employed in such school. Upon giving notice of proposed discharge to an educator, the supervisor involved shall immediately notify the appropriate school board of such action. A determination by the school board that such educator shall not be discharged shall be followed by the supervisor. The supervisor shall have the right to appeal such action to the next highest direct officer in his/her chain of command. Upon such appeal, the stated officer may, for good cause and in writing to the local school board, overturn the determination of the school board with respect to the discharge of such individual.

(3) Each appropriate school board shall have the right-

(A) to recommend to the supervisor that an educator employed by the Office of Indian Education Programs be discharged; and

(B) to recommend to the supervisor of the appropriate education line office or to the Director of the Office, that the supervisor of the school be discharged.

Section 1137, Page 108, Lines 11 - 16 - The Navajo Nation was very troubled that the language in the first draft of the legislation would have excluded participation by Indian tribes themselves in the negotiated rulemaking committee and provide only for representatives from tribally-operated schools. This intrusion into the government-to-government relationship between the United States and the Indian tribes would have been unwarranted and would not have served the interests of either Indian tribes or Indian peoples. The Navajo Nation supports the language set forth in the second draft of the bill at the above location.

Section 1137(d), Pages 107 - 108 - The Navajo Nation wants to ensure that it has the greatest possible level of participation in the development of regulations governing the implementation of these educational laws. Towards that goal, the Navajo Nation recommends that a negotiated rule-making process be established. The Navajo Nation strongly supports the current language in the draft legislation, Section 1137(d).

Section 1138(g), Page 115, Lines 7 - 10 - The Navajo Nation supports the appropriation authorization set forth in the second draft of the bill.

Section 1139, Page 117, Lines 9 - 13 - The Navajo Nation would like to see real emphasis placed on the implementation of the section of the law on tribal departments of education. To this end, the Navajo Nation supports the language in the second draft of the legislation at the above location.

The Navajo Nation appreciates the opportunity to present written and oral testimony before the Senate Committee on Indian Affairs on this extremely important area of education legislation, and would be pleased to provide further information or assistance to the Committee in preparation of the bill to be presented to Congress by this Committee.

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